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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 134

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI and ANDREW J. YUHAS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JUNE 16, 1950.

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1 In the United States District Court in and for the Southern District of Florida

No. 7333-M-Cr.

UNITED STATES OF AMERICA,

vs.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, and ANDREW J. YUHAS.

Indictment (Title 18 U. S. C.) (1621)—Filed Feb. 25, 1949

The Grand Jury charges:

COUNT ONE

Heretofore on, to-wit, the 17th day of January, A. D. 1949, a certain criminal trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being Case No. 7279-M-Criminal, wherein the United States as plaintiff was prosecuting Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Lindsley Lumber Co., a corporation, which name in the course of the trial was amended to read "Dania Supply Co., a corporation doing business as Lindsley Lumber Co."; that in said Case No. 7279-M Criminal the defendants therein, in Count One thereof, were charged with a violation of Section 51 of Title 18 U. S. C. in that the said defendants, as it was alleged, did conspire to injure, oppress, threaten and intimidate one Frank J. Purnell, Jr., in the free exercise and enjoyment of certain rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law,

2 the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants

would arrest and detain and cause to be arrested and detained the said FRANK J. PURNELL, JR. and would cause the said FRANK J. PURNELL, JR. to go to and into a certain building, sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and that they, the said defendants would detain the said FRANK J. PURNELL, JR. in said shack or building and that while said FRANK J. PURNELL, JR. was so detained, the said defendants or some of them would then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of guilt in connection with the alleged theft of personal property alleged to belong to the said Dania Supply Co., doing business as Lindsley Lumber Co. and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR., and thereupon it became and was then and there a material question in the hearing and determination of said criminal trial, whether or not, in said building

3 sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, on or about the 20th day of March, 1947, the said FRANK J. PARNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by JAY G. WILLIAMS, one of the defendants then on trial.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said Court, the said defendant JAY G. WILLIAMS was then and there called and produced as a witness on his own behalf, and on behalf of the other defendants, then and there on trial as aforesaid; that as such witness in said criminal trial aforesaid, the said JAY G. WILLIAMS, on said 19th day of January, 1949, was duly sworn by Albert E. Call, a Deputy Clerk of the said Court to testify the truth, the whole truth and nothing but the truth, he, the said Albert E. Call, as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to administer such oath:

And being then and there a witness in said criminal trial aforesaid, and being so duly sworn as aforesaid, the said defendant JAY G. WILLIAMS, on to-wit, the 19th day of January, 1949, did knowingly, wilfully, corruptly, feloniously and falsely depose and say in substance that he, the said JAY G. WILLIAMS, had not, on the 28th day of March, A. D. 1947, in said building or shack aforesaid, struck, bruised, battered, beaten, assaulted or tortured the said FRANK J. PURNELL, JR. whereas in truth and in fact the said JAY G. WILLIAMS at the time and place last aforesaid, to-wit, in said building or shack herein described on, to-wit, the 26th day of March, A. D. 1947, had struck, bruised, battered, beaten, assaulted and tortured the said FRANK J. PURNELL, JR., in all of which particulars, with respect to the purported striking, bruising, battering, beating, assaulting
4 and torturing the said FRANK J. PURNELL, JR. so testified to as aforesaid by said defendant JAY G. WILLIAMS, the testimony, statements and declarations so testified and deposed unto by him the said JAY G. WILLIAMS were then and there material in and to the said criminal trial so held as aforesaid and the issues then being tried, and were then and there not true, but were false, and were then and there by him, the said JAY G. WILLIAMS, not believed to be true, but were then and there by him, the said JAY G. WILLIAMS, believed to be false.

And so the grand jurors aforesaid, do find, say and charge that the said JAY G. WILLIAMS on said 19th day of January, A. D. 1949, at Miami, Florida, in the district aforesaid and within the jurisdiction of this court, in and by his oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

The offense described in this and each other count, severally, of this indictment, is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in any other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

COUNT TWO

Heretofore, on to-wit, the 17th day of January, A. D. 1949, a certain trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being Case No 7279-M

Criminal wherein the United States as plaintiff was prosecuting JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, which name in the course
5 of the trial was amended to read "Dania Supply Co., a corporation doing business as Lindsley Lumber Co."; that in said case No. 7279-M Criminal the defendants therein, in Count Two thereof, were charged with a violation of Section 52 of Title 18 U. S. C. in that, as it was alleged, the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY were Special Police Officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of Special Police Officer, and describing the duties of said office and position, and CHARLES R. FORD was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, and that said JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD, as such officers did wilfully under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and municipality of Miami in said state, creating the office and position of police officer, and special police officer, of the municipality of Miami, Florida, subject and cause to be subjected FRANK J. PURNELL, JR., an inhabitant of the State of Florida, to deprivation of rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in
6 the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, A. D. 1947, the defendants

arrested and detained, and caused to be arrested and detained, the said FRANK J. PURNELL, JR. and brought and caused to be brought to and into a certain building sometimes called a shack on the premises of the Dania Supply Co., a corporation doing business as Lindsley Lumber Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and did then and there detain the said FRANK J. PURNELL, JR. and while he was so detained the said defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of said Dania Supply Co. doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co. doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR., that at the time and places in said indictment stated ANDREW J. YUHAS, and DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co., well knowing the premises did wilfully aid and abet in the commission by the defendants JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD of the offense described in said Count Two; thereupon it became and was then and there a material question in the determination of said criminal trial,

7 whether or not, in said building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, on or about the 28th day of March, 1947, the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by JAY G. WILLIAMS, one of the defendants then on trial.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said court, the said defendant JAY G. WILLIAMS was then and there called and produced as a witness on his own behalf, and on behalf of the other defendants, then and there on trial as aforesaid; that as such witness in said criminal trial aforesaid, the said JAY G. WILLIAMS on said 19th day of January, 1949 was duly sworn by Albert E. Call, a Deputy Clerk of the said Court, to testify the truth, the whole

truth and nothing but the truth, he, the said Albert E. Call as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to Administer such oath;

And being then and there a witness in said criminal trial aforesaid, and being so duly sworn as aforesaid, the said defendant JAY G. WILLIAMS on said 19th day of January, 1949, or thereafter, did knowingly, wilfully, corruptly, feloniously and falsely depose and say in substance that he, the said JAY G. WILLIAMS, had not, on the 28th day of March, A. D. 1947, in said building or shack aforesaid, struck, bruised, battered, beaten, assaulted or tortured the said FRANK J. PURNELL, JR., whereas in truth and in fact the said JAY G. WILLIAMS at the time and place last aforesaid, to-wit, in said building or shack herein described on, to-wit, the 28th day of March, A. D. 1947, had struck, bruised, battered, beaten, assaulted and tortured the said FRANK J. PURNELL, JR., in all of which particulars, with respect to the purported striking, bruising, battering, beating,
8 assaulting and torturing the said FRANK J. PURNELL, JR. so testified to as aforesaid by said defendant JAY G. WILLIAMS the testimony, statements and declarations so testified and deposed unto by the said JAY G. WILLIAMS were then and there material in and to the said criminal trial so held as aforesaid and the issues then being tried, and were then and there not true, but were false, and were then and there by the said JAY G. WILLIAMS not believed to be true, but were then and there by him the said JAY G. WILLIAMS believed to be false.

And so the grand jurors aforesaid, do find, say and charge that the said JAY G. WILLIAMS on said 19th day of January, A. D. 1949, at Miami, Florida, in the district aforesaid and within the jurisdiction of this court, in and by his oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

The offense described in this and each other count, severally, of this indictment, is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in any other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

COUNT THREE

Heretofore on, to-wit, the 17th day of January, A. D. 1949, a certain criminal trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being case No. 7279-M Criminal, wherein the United States as plaintiff was prosecuting JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, which name in the course of the trial was amended to read "DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co."; that in said Case No. 7279-M Criminal the defendants therein, in Count One thereof, were charged with a violation of Section 51 of Title 18 U. S. C. in that the said defendants, as it was alleged, did conspire to injure, oppress, threaten and intimidate one FRANK J. PURNELL, JR., in the free exercise and enjoyment of certain rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said FRANK J. PURNELL, JR. and would cause the said FRANK J. PURNELL, JR. to go to and into a certain building, sometimes
10 called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and that they, the said defendants would detain the said FRANK J. PURNELL, JR. in said shack or building and that while said FRANK J. PURNELL, JR. was so detained, the said defendants or some of them would then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in

order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of guilt in connection with the alleged theft of personal property alleged to belong to the said DANIA SUPPLY CO., doing business as Lindsley Lumber Co. and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR. and in Count Two thereof, were charged with a violation of Section 52 of Title 18 U. S. C. in that, as it was alleged, the defendants, JAY G. WILLIAMS and JOSEPH V. PERRY were Special Police Officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of Special Police Officer, and describing the duties of said office and position, and CHARLES R. FORD was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position,

11 and that said JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD, as such officers did wilfully under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and municipality of Miami in said state, creating the office and position of police officer, and special police officer, of the municipality of Miami, Florida, subject and cause to be subjected FRANK J. PURNELL, JR., an inhabitant of the State of Florida, to deprivation of rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found

guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, A. D. 1947, the defendants arrested and detained, and caused to be arrested and detained, the said FRANK J. PURNELL, JR. and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Dania Supply Co., a corporation doing business as Lindsley Lumber Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and did then and there detain the said FRANK J. PURNELL, JR. and while he was so detained the said defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of his guilt in connection with the alleged theft of
12 personal property alleged to be the property of said Dania Supply Co. doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co. doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR.; that at the time and places in said indictment stated ANDREW J. YUHAS and DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co., well knowing the premises did wilfully aid and abet in the commission by the defendants JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD of the offense described in said Count Two; and thereupon it became and was then and there a material question in the hearing and determination of said criminal trial, whether or not, in said building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, on or about the 28th day of March, 1947, the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by JAY G. WILLIAMS, one of the defendants then on trial.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said Court, the said defendant JAY G. WILLIAMS was then and there called and produced as a witness on his own behalf, and on behalf of the other defendants, then and there on trial as aforesaid; that as such witness in said criminal

trial aforesaid, the said JAY G. WILLIAMS, on said 19th day of January, 1949, was duly sworn by Albert E. Call, a Deputy Clerk of the said Court to testify the truth, the whole truth and nothing but the truth, he, the said Albert E. Call, as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to administer such oath;

13 And being then and there a witness in said criminal trial aforesaid, and being so duly sworn as aforesaid, the said defendant JAY G. WILLIAMS, on to-wit, the 19th day of January, 1949, did knowingly, wilfully, corruptly, feloniously and falsely depose and say in substance that he, the said JAY G. WILLIAMS, had not, on the 28th day of March, A. D. 1947, in said building or shack aforesaid, struck, bruised, battered, beaten, assaulted or tortured the said FRANK J. PURNELL, JR. whereas in truth and in fact the said JAY G. WILLIAMS at the time and place last aforesaid, to-wit, in said building or shack herein described on, to-wit, the 28th day of March, A. D. 1947, had struck, bruised, battered, beaten, assaulted and tortured the said FRANK J. PURNELL, JR., in all of which particulars, with respect to the purported striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR. so testified to as aforesaid by said defendant JAY G. WILLIAMS, the testimony, statements and declarations so testified and deposed unto by him the said JAY G. WILLIAMS were then and there material in and to the said criminal trial so held as aforesaid and the issues then being tried, and were then and there not true, but were false, and were then and there by him, the said JAY G. WILLIAMS, not believed to be true, but were then and there by him, the said JAY G. WILLIAMS, believed to be false.

And so the grand jurors aforesaid, do find, say and charge that the said JAY G. WILLIAMS on said 19th day of January, A. D. 1949, at Miami, Florida, in the district aforesaid and within the jurisdiction of this court, in and by his oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

The offense described in this and each other count, severally, of this indictment, is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in any other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

14 COUNT FOUR

Heretofore, on, to-wit, the 17th day of January, A.D. 1949, a certain criminal trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being Case No. 7279-M Criminal, wherein the United States as plaintiff was prosecuting JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, which name in the course of the trial was amended to read "DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co."; that in said Case No. 7279-M Criminal, the defendants therein, in Count One thereof were charged with a violation of Section 51 of Title 18 U. S. C. in that the said defendants, as it was alleged, did conspire to injure, oppress, threaten and intimidate one FRANK J. PURNELL, JR., in the free exercise and enjoyment of certain rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida: and that it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants would arrest and

15 detain and cause to be arrested and detained the said Frank J. Purnell, Jr. and would cause the said FRANK J. PURNELL, JR. to go to and into a certain building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and that they, the said defendants would detain the said FRANK J. PURNELL, JR. in said shack or building and that while said FRANK J. PURNELL, JR. was so detained, the said defendants or some of them would then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PARNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to

make an admission and confession of guilt in connection with the alleged theft of personal property alleged to belong to the said Dania Supply Co., doing business as Lindsley Lumber Co. and in order to illegally coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR., and thereupon it became and was then and there a material question in the hearing and determination of said criminal trial whether or not, in said building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, on or about the 28th day of March, 1947, the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by JAY G. WILLIAMS, one of the defendants then on trial, and particularly it thereupon became and was a material question, in the criminal trial aforesaid, whether or not in the presence of the defendant CHARLES R. FORD the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by the said JAY G. WILLIAMS, and whether or not the said CHARLES R. FORD had observed and seen the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing said Frank J. Purnell, Jr.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said court, the said defendant CHARLES R. FORD was then and there called and produced as a witness on his own behalf, and on behalf of the other defendants, then and there on trial as aforesaid; that as such witness in said criminal trial aforesaid, the said defendant CHARLES R. FORD on said 19th day of January, 1949 was duly sworn by Albert E. Call, a Deputy Clerk of the said Court, to testify the truth, the whole truth and nothing but the truth, the said Albert E. Call, as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to administer such oath;

And being then and there a witness in said criminal trial aforesaid, and being so sworn as aforesaid, the said defendant CHARLES R. FORD, on said 19th day of January, 1949 or thereafter, did knowingly, wilfully, corruptly, feloniously

and falsely depose and say in substance that the said FRANK J. PURNELL, JR. had not on the 28th day of March, A. D. 1947, in said building or shack aforesaid, in the presence of said CHARLES R. FORD, been struck, bruised, battered, beaten and assaulted by the said JAY G. WILLIAMS and that he, the said CHARLES R. FORD had not at the time and place last aforesaid seen and observed the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR., whereas in truth and in fact the said CHARLES R. FORD at the time last aforesaid, to-wit, in said building or shack herein described, on to-wit, the 28th day of March, A. D. 1947, had been present in said building and shack aforesaid when said JAY G. WILLIAMS did strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR. and at the time and place last aforesaid had seen and observed the said JAY G. WILLIAMS strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR., in all of which particulars, with respect to the purported striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR. by the said JAY G. WILLIAMS as so testified to as aforesaid by the said CHARLES R. FORD, the testimony, statements and declarations so testified and deposed unto by the said CHARLES R. FORD were then and there material in and to the said criminal trial so held as aforesaid, and were then and there not true, but were false, and were then and there by the said CHARLES R. FORD not believed to be true but were then and there by him, the said CHARLES R. FORD, believed to be false.

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And so the grand jurors aforesaid do find, say and charge that the said CHARLES R. FORD on said 19th day of January, 1949, at Miami, Florida, in the District aforesaid and within the jurisdiction of this court, in and by his oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

The offense described in this and each other count severally of this indictment is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in each and every other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

18 COUNT FIVE

Heretofore, on to-wit, the 17th day of January, A. D. 1949, a certain criminal trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being case No. 7279-M Criminal wherein the United States as plaintiff was prosecuting JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, which name in the course of the trial was amended to read "Dania Supply Co., a corporation doing business as Lindsley Lumber Co."; that in said case No. 7279-M Criminal the defendants therein in Count Two thereof were charged with a violation of Section 52 of Title 18 U. S. C. in that said defendants, as it was alleged, JAY G. WILLIAMS and JOSEPH V. PERRY were Special Police Officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of Special Police Officer, and describing the duties of said office and position, and CHARLES R. FORD was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, did wilfully under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and municipality of Miami in said state, creating the office and position of police officer of the municipality of Miami, Florida, subject and cause to be

19 subjected FRANK J. PURNELL, JR., an inhabitant of the State of Florida to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and

privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, A. D. 1947, the defendants arrested and detained, and caused to be arrested and detained, the said FRANK J. PURNELL, JR. and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Dania Supply Co., a corporation doing business as Lindsley Lumber Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and did then and there detain the said FRANK J. PURNELL, JR. and while he was so detained the said defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of said Dania Supply Co. doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co. doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR.; that at the time and places in said indictment stated ANDREW J. YUHAS and DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co., well knowing the premises did wilfully aid and abet in the commission by the defendants JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD of the offense described in said Count Two; thereupon it became and was then and there a material question in the determination of said criminal trial, whether or not, in said building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, in the City of Miami, Dade County, Florida, on or about the 28th day of March, 1947, the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured by JAY G. WILLIAMS, one of the defendants then on trial.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said court, the said defendant CHARLES R. FORD was then and there called and produced as a witness on his own behalf, and on the behalf of the other defendants, then and there

on trial as aforesaid; that as such witness in said criminal trial aforesaid, the said defendant CHARLES R. FORD on said 19th day of January, 1949 was duly sworn by Albert E. Call, a Deputy Clerk of the said Court, to testify the truth, the whole truth and nothing but the truth, he, the said Albert E. Call, as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to administer such oath;

And being then and there a witness in said criminal trial aforesaid, and being so sworn as aforesaid, the said defendant CHARLES R. FORD, on said 19th day of
21 January 1949 or thereafter, did knowingly, wilfully, corruptly, feloniously and falsely depose and say in substance that the said FRANK J. PURNELL, JR. had not on the 28th day of March, A. D. 1947, in said building or shack aforesaid, in the presence of said CHARLES R. FORD, been struck, bruised, battered, beaten and assaulted by the said JAY G. WILLIAMS and that he, the said CHARLES R. FORD, had not at the time and place last aforesaid seen and observed the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR., whereas in truth and in fact the said CHARLES R. FORD at the time last aforesaid, to-wit, in said building or shack herein described, on to-wit, the 28th day of March, A. D. 1947, had been present in said building and shack aforesaid when said JAY G. WILLIAMS did strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR. and at the time and place last aforesaid had seen and observed the said JAY G. WILLIAMS strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR., in all of which particulars with respect to the purported striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR. by the said JAY G. WILLIAMS as so testified to as aforesaid by the said CHARLES R. FORD, the testimony, statements and declarations so testified and deposed unto by the said CHARLES R. FORD were then and there material in and to the said criminal trial so held as aforesaid, and were then and there not true, but were false, and were then and there by the said CHARLES R. FORD not believed to be true but were then and there by him, the said CHARLES R. FORD, believed to be false.

And so the grand jurors aforesaid do find, say and charge that the said CHARLES R. FORD on said 19th day of January, 1949, at Miami, Florida, in the District aforesaid and within the jurisdiction of this court, in and by his

oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

22 The offense described in this and each other count severally of this indictment is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in each and every other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

COUNT SIX

Heretofore, on to-wit, the 17th day of January, A. D. 1949, a certain criminal trial came on to be heard in the United States District Court in and for the Southern District of Florida, at Miami, Florida, the same being case No. 7279-M Criminal, wherein the United States as plaintiff was prosecuting JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, which name in the course of the trial was amended to read "Dania Supply Co., a corporation doing business as Lindsley Lumber Co."; that in said case No. 7279-M Criminal, the defendants therein, in Count One thereof were charged with a violation of Section 51 of Title 18 U. S. C. in that the said defendants, as it was alleged, did conspire to injure, oppress, threaten and intimidate one FRANK J. PURNELL, JR. in the free exercise and enjoyment of certain rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida,

23 from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; and that it was the plan and purpose of said conspiracy that on or about the 28th day of March, 1947, the said defendants would arrest and detain and cause to be arrested and detained the said FRANK J. PURNELL, JR. and would cause the

said FRANK J. PURNELL, JR. to go to and into a certain building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and that they, the said defendants would detain the said FRANK J. PURNELL, JR. in said shack or building and that while said FRANK J. PURNELL, JR., was so detained, the said defendants or some of them would then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of guilt in connection with the alleged theft of personal property alleged to belong to the said Dania Supply Co., doing business as Lindsley Lumber Co. and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Dania Supply Co., doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR.; and in Count Two thereof were charged with a violation of Section 52 of Title 18 U. S. C. in that said defendants, as it was alleged, JAY G. WILLIAMS and JOSEPH V. PERRY were Special Police Officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of Special Police Officer, and describing the duties of said office and position, and CHARLES R. FORD was then and there a police officer employed by the municipality
24 of Miami, State of Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, did wilfully under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and municipality of Miami in said state, creating the office and position of police officer of the municipality of Miami, Florida, subject and cause to be subjected FRANK J. PURNELL, JR., an inhabitant of the State of Florida to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege

to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, A. D. 1947, the defendants arrested and detained, and caused to be arrested and detained, the said FRANK J. PURNELL, JR. and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Dania Supply Co., a corporation doing business as Lindsley Lumber Co. at or near 3810 Northwest 17th Avenue in the City of Miami, Dade County, Florida, and did then and there detain the said FRANK J. PURNELL, JR. and while he was so detained the said defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said FRANK J. PURNELL, JR. in order illegally to coerce and force the said FRANK J. PURNELL, JR. to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of said Dania Supply Co. doing business as Lindsley Lumber Co., and in order illegally to coerce and force the said FRANK J. PURNELL, JR. to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said DANIA SUPPLY CO. doing business as Lindsley Lumber Co. and for the purpose of imposing illegal summary punishment upon the said FRANK J. PURNELL, JR.; that at the time and places in said indictment stated ANDREW J. YUHAS and DANIA SUPPLY CO., a corporation doing business as Lindsley Lumber Co., well knowing the premises did wilfully aid and abet in the commission by the defendants JAY G. WILLIAMS, JOSEPH V. PERRY and CHARLES R. FORD of the offense described in said Count Two; and thereupon it became and was then and there a material question in the hearing and determination of said criminal trial whether or not, in said building sometimes called a shack, on the premises of said Dania Supply Co. at or near 3810 Northwest 17th Avenue, on or about the 28th day of March, 1947, the said FRANK J. PURNELL, JR. had been struck, bruised, battered, beaten, assaulted and tortured

by JAY G. WILLIAMS, one of the defendants then on trial, and particularly it thereupon became and was a material question, in the criminal trial aforesaid, whether or not in the presence of the defendant CHARLES R. FORD the said FRANK J. PURNELL, JR., had been struck, bruised, battered, beaten, assaulted and tortured by the said JAY G. WILLIAMS, and whether or not the said CHARLES R. FORD
26 had observed and seen the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing said FRANK J. PURNELL, JR.

Thereupon on the 19th day of January, 1949, while said case was still on trial and being heard by and before said court, the said defendant CHARLES R. FORD was then and there called and produced as a witness on his own behalf, and on behalf of the other defendants, then and there on trial as aforesaid; that as such witness in said criminal trial aforesaid, the said defendant CHARLES R. FORD on said 19th day of January, 1949 was duly sworn by Albert E. Call, a Deputy Clerk of the said Court, to testify the truth, the whole truth and nothing but the truth, he, the said Albert E. Call, as said Deputy Clerk, being then and there duly authorized and empowered under the laws of the United States to administer such oaths;

And being then and there a witness in said criminal trial aforesaid, and being so sworn as aforesaid, the said defendant CHARLES R. FORD, on said 19th day of January 1949 or thereafter, did knowingly, wilfully, corruptly, feloniously and falsely depose and say in substance that the said FRANK J. PURNELL, JR. had not on the 28th day of March, A. D. 1947, in said building or shack aforesaid, in the presence of said CHARLES R. FORD, been struck, bruised, battered, beaten and assaulted by the said JAY G. WILLIAMS and that he, the said CHARLES R. FORD had not at the time and place last aforesaid seen and observed the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR., whereas in truth and in fact the said CHARLES R. FORD at the time last aforesaid, to-wit, in said building or shack herein described, on to-wit, the 28th day of March,
A. D. 1947, had been present in said building and
27 shack aforesaid when said JAY G. WILLIAMS did strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR. and at the time and place last aforesaid had seen and observed the said JAY G. WILLIAMS strike, bruise, batter, beat, assault and torture said FRANK J. PURNELL, JR., in all of which particulars with respect

to the purported striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR. by the said JAY G. WILLIAMS as so testified to as aforesaid by the said CHARLES R. FORD, the testimony, statements and declarations so testified and deposed unto by the said CHARLES R. FORD were then and there material in and to the said criminal trial so held as aforesaid, and were then and there not true, but were false, and were then and there by the said CHARLES R. FORD not believed to be true but were then and there by him, the said CHARLES R. FORD, believed to be false.

And so the grand jurors aforesaid do find, say and charge that the said CHARLES R. FORD on said 19th day of January, 1949, at Miami, Florida, in the District aforesaid and within the jurisdiction of this court, in and by his oath so taken as aforesaid, and his testimony as aforesaid, did knowingly, wilfully, corruptly and feloniously commit wilful and corrupt perjury.

The offense described in this and each other count severally of this indictment is one of a series of connected acts and transactions, in which series of connected acts and transactions the defendant named in this count and each defendant named in each and every other count of this indictment participated.

In violation of Section 1621, Title 18 U. S. C. (1948 Ed.).

222 A true bill.

/s/ ERNEST J. C. DOLL
Foreman

/s/ FRED BOTTS
Asst. United States Attorney

223 (Reverse Side)

United States District Court
Southern District of Florida
Miami Division

THE UNITED STATES OF AMERICA
vs.
JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, ANDRES J. YUHAS.

Indictment

Sec. 1621, Title 18 U. S. C.
Perjury.
A true bill,

/s/ ERNEST J. C. DOLL
Foreman.

Filed in open court this 25th day of February, A. D. 1949.

EDWIN R. WILLIAMS,
Clerk.

By EARLE F. SPRIGG,
Deputy Clerk.

224 In United States District Court

Motion of Charles R. Ford to Dismiss Indictment—Filed May 2, 1949.

CHARLES R. FORD, one of the defendants herein, by and through his undersigned attorney, moves that the indictment in this cause be dismissed for the following reasons and upon the grounds herein assigned.

1. The indictment, and each and every count thereof, fails to charge an offense under the laws of the United States.

2. The indictment and each and every count thereof is duplicitous.

3. Unrelated offenses are improperly joined in the indictment.

4. It affirmatively appears that the several defendants named in the indictment are not alleged to have all participated in all of the acts or transactions charged, nor in the same series of acts or transactions, and, on the contrary,

it affirmatively appears that each of the defendants is alleged to have committed an act unrelated to and not in series with the acts alleged to have been committed by each of the other defendants, and that the defendants and improperly joined in the indictment.

5. The Court was without jurisdiction to try this defendant under the indictment in cause numbered 7279-M-Criminal.

6. The indictment in cause numbered 7279-M-Criminal does not state an offense punishable under the laws of the United States.

7. The Government is estopped, by reason of the verdict and judgment of acquittal of this defendant as to Counts numbered 2, 4, 6 and 8 of the indictment in cause numbered 7279-M-Criminal, in the light of the instructions given to the jury by the Court in that cause, to prosecute this defendant for the perjury alleged in the indictment in the case at bar.

225 Respectfully submitted,

/s/ JOHN D. MARSH
John D. Marsh
1402-Courthouse
Miami, Florida
Attorney for Charles R. Ford

RECEIPT of a copy of the above Motion is hereby acknowledged, this the 2nd day of May, A. D. 1949.

ASSISTANT UNITED STATES DISTRICT ATTORNEY

By FRED BOTTS
By E.

In United States District Court

Motion of Jay G. Williams to Dismiss Indictment—Filed May 2, 1949

The Defendant, JAY G. WILLIAMS, moves that the indictment and each count thereof, numbered 1, 2, 13, 14, 15, 25, 26, 27, 37, 38 and 39 and such other separate count wherein this Defendant is the defendant, jointly and severally, be dismissed on the following grounds:

1) That said indictment does not state facts sufficient to constitute an offense against the United States of America.

2) Section 51 of Title 18 United States Code deals with threats to civil rights arising from the action of private in-

dividuals, while Section 52 covers actions of public officers acting under color of law, and the Indictment on its face shows that the Defendants, JAY G. WILLIAMS and CHARLES R. FORD were officers of the State of Florida, and therefore, Section 51 does not cover any of the actions of such officers.

3) Said Section 51, Title 18, United States Code is unconstitutional because it is vague, uncertain, indefinite and insufficient, and an Indictment based thereon does not apprise a Defendant of the true cause and character of the accusation he is called upon to defend, and for that a conviction or acquittal under an Indictment based on said Section would subject the Defendant to substantial
226 danger of another prosecution for the same offense.

4) Said Section 51, Title 18, United States Code lacks the specificity necessary in a constitutional statute, in accordance with the opinion of the United States Supreme Court in the case of Screws vs. United States 325 U. S. 90.

5) And as grounds of estoppel or former of jeopardy or *res adjudicata,* this Defendant alleges that in said case No. 7279-M-Criminal referred to in the indictment, was a case in which these individual defendants in the instant case and others were charged with the violation of the substantive crime in counts 2-4-6 and 8 of said case No. 7279-M-Criminal, with the violation of Section 52 of Title 18 U. S. C. (1946 Ed.), and in counts numbered 1-3-5 and 7 in said indictment No. 7279-M-Criminal, with a conspiracy to violate Section 51 of Title 18 U. S. C. (1946 Ed.) in which said last counts these defendants and others were defendants, and that the said defendants, JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI and ANDREW J. YUHAS and others, after being arraigned and having plead not guilty to said Indictment in said Case No. 7279-M-Criminal of this Court, were, on January 17, 1949 tried in this Court before a jury duly empaneled and sworn to try said cause, and on January 21, 1949, a verdict of guilty was returned by said jury as to this Defendant, JAY G. WILLIAMS on counts numbered 2-4-6 and 8 of the said Indictment in Case No. 7279-M-Criminal and that the said jury was unable to agree as to any said defendant in said case No. 7279-M-Criminal on counts numbered 1-3-5 and 7 of said indictment, and that on February 11, 1949, as to JAY G. WILLIAMS in said Case No. 7279-M-Criminal, this Court entered judgment and commitment of one year on counts numbered 2-4-6 and 8 to run consecutively as to said JAY G. WILLIAMS or a four-year sentence in all; that said judgment and conviction still remains in full

force and effect and not in the least reversed or made void.

And the said Defendant, JAY G. WILLIAMS in the in-
227 stant case is one and the same person as the Defendant in this cause, as are the other individual defendants herein, and the said Defendant, JAY G. WILLIAMS states that in the trial of said Case No. 7279-M-Criminal, this Defendant was called as a witness in his own behalf and testified as alleged in the indictment herein, to-wit: that he had not struck, bruised, battered, beaten, assaulted or tortured any of the complaining witnesses, PURNELL, PRIEST, ROBINSON or STURNIOLA, and that the said fact or facts so testified to by this Defendant in his own behalf and denial of said assault and battery as aforesaid, was the act constituting the basis of the claim charged in said criminal case No. 7279-M-Criminal and this fact was necessarily determinative of the issue—and this Defendant alleges that his conviction under counts numbered 2-4-6 and 8 of said indictment numbered 7279-M-Criminal bars a prosecution for perjury in the instant case.

WHEREFORE, this Defendant prays that he be discharged, and the indictment herein be dismissed.

RILEY & DRESSLER

By /s/ A. C. DRESSLER
Of Counsel
Attorney for Defendant
1030 Seybold Building
Miami, Florida

In United States District Court

Motion of Andrew J. Yuhas to Dismiss Indictment—Filed May 2, 1949

Comes now the defendant, Andrew J. Yuhas, by and through his undersigned attorneys, and moves the Court to dismiss the indictment filed against him in this cause and each and every count thereof, and for grounds of said motion says:

1.

That each and every Count of the indictment fails
228 to charge defendants with a public offense or any crime against the laws of the United States of America.

2.

Counts 12, 24, 36 and 48 are duplicitous in that they allege two or more causes of actions.

3.

The present indictment is based upon evidence given on a material issue in case No. 7279-M-CR., and it affirmatively appears that the testimony of defendant, Yuhas, in Criminal Case No. 7279-M was upon a material issue of which the defendant has been adjudged not guilty by a competent jury of this Court, on January 21, 1949, of "wilfully aiding and abeting" in an alleged commission of a substantative offense of conspiracy, and is a bar to the present cause in that the material issue is *res adjudicata*.

4.

It affirmatively appears that the testimony of defendant, Andrew J. Yuhas, upon which the present indictment is based, is the result of alleged testimony given in defendant's behalf and was the basis of the crime charged in Criminal Trial No. 7279-M and upon which defendant was acquitted by a competent jury of this Court. In Case No. 7279-M-CR on which defendant was acquitted of the substantative offense of "willfully aiding and abeting" an alleged conspiracy, the United States Government was the prosecutor and he was a defendant. The basis of the crime charged in case No. 7279-M-CR. on which he was tried and the case now charging him with perjury is identical. The proof requisite in both cases is identical. The finding of the jury in case No. 7279-M-Cr is conclusive of the fact that he, defendant Andrew J. Yuhas, was not testifying falsely, and therefore the United States Government is estopped from charging the defendant Yuhas with having perjured himself in Case No. 7279-M-Cr.

5.

That each and every count fails to charge defendant, Andrew J. Yuhas with an offense under Title 18, Sec-
229 tion 1621, of the United States Code.

6.

The defendant, Andrew J. Yuhas, adopts each and every ground for dismissal made by any and all the remaining

defendants, in so far as the same are pertinent and applicable.

ROBERTS, HOLLAND & STRICKLAND

By: ED STRICKLAND
Attorney for Defendant,
Andrew J. Yuhas

In United States District Court

Stipulation—Filed March 28, 1950

IT IS HEREBY STIPULATED between counsel representing the United States of America and the defendants, Jay G. Williams, Charles R. Ford, John S. Bombaci and Andrew J. Yuhas, that the Court receive in evidence in support of the Motions to Dismiss, filed by the said defendants to the Indictment herein, the true and correct transcript of the shorthand notes taken by an official Court Reporter in the case of United States of America versus Jay G. Williams, *et al*, Case Number 7279-M-CR of this Court, Miami Division, on January 17, 18, 19 and 20, 1949, the Honorable Alfred D. Barksdale as Trial Judge and a jury duly impaneled and sworn to try said case.

IT IS FURTHER STIPULATED between counsel for the respective parties hereto that the Court consider as a part of the evidence herein, as though the same were fully set out herein, a verdict of the Jury dated and entered January 21, 1949 in said cause of the United States of America versus Jay G. Williams, *et al.*, Case Number 7279-M-CR of this Court, wherein said Jury returned a verdict of guilty as to Jay G. Williams as to Counts 2, 4, 6 and 8 of the Indictment therein, and not guilty as to one Perry and John S.
230 Bombaci, Charles R. Ford, Andrew J. Yuhas and Dania Supply Co., doing business as Lindsley Lumber Company, on Counts 2, 4, 6 and 8 of said Indictment therein; said verdict also stating that the Jury was unable to agree as to any defendant on Counts 1, 3, 5 and 7 of said Indictment in Case Numbered 7279-M-CR aforesaid.

IT IS FURTHER STIPULATED THAT the Court receive in evidence, as though the same were fully set out herein, Judgment and Commitment dated and entered February 11, 1949 in said case of United States of America versus the said defendants in said case numbered 7279-M-CR of this Court and recorded in Minute Book 35, Pages 406-408 of this Court, wherein the defendant Jay G. Williams was sentenced ONE YEAR on each Count numbered 2, 4, 6, and 8 to run consecutively.

IT IS FURTHER STIPULATED between the parties hereto that the Indictment in said case numbered 7279-M-CR, consisting of 8 Counts, lately pending in this Court, be considered as a part of the evidence in this case as though the same were fully set out herein.

All of the above matters and things herein stipulated are to be used in support of the said Motions to Dismiss filed by the respective parties defendant herein in the above entitled cause.

Dated at Miami, Florida, this 28th day of March, 1950.

UNITED STATES OF AMERICA
By FRED BOTTS
Assistant United States District Attorney

A. C. DRESSLER
Attorney for Defendant,
Jay G. Williams
1030 Seybold Bldg., Miami, Florida

JOHN D. MARSH
A. C. DRESSLER
Attorneys for Defendant,
John S. Bombaci
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ED. STRICKLAND
Of Counsel for the Defendant,
Andrew J. Yuhas

JOHN D. MARSH
Attorney for Defendant
Charles R. Ford
1402 Court House, Miami, Florida

In United States District Court

Order—Filed March 28, 1950

The attached Transcript of Testimony, consisting of 2 Volumes, containing 534 numbered pages exclusive of the Reporter's Certificate, was introduced and received in evidence in Case No. 7333-M-CR, wherein United States of America is plaintiff and Jay G. Williams, *et als.*, are defendants, said testimony as transcribed being received in evidence in support of the Motions to Dismiss filed by the defendants in said case No. 7333-M-CR, said defendants being: JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, and ANDREW J. YUHAS.

Said Transcript of Testimony is further received in evidence under written Stipulation dated and filed March 28, 1950, in said Case No. 7333-M-CR of this Court.

Dated this March 28, 1950.

JOHN W. HOLLAND,
District Judge

On March 28, 1950, Transcript of Testimony taken in Case No. 7279-M-CR., and received in evidence under written Stipulation dated and filed March 28, 1950, was filed in words and figures as follows:

(Transcript of testimony omitted in printing. See Stipulation appearing at side page 823.)

774 In the United States District Court in and for the Southern District of Florida.
Miami Division

No. 7279-M-Cr.

UNITED STATES OF AMERICA
vs.
JAY G. WILLIAMS; JOSEPH V. PERRY; JOHN S. BOMBACI; CHARLES R. FORD; ANDREW J. YUHAS and DANIA SUPPLY COMPANY, a corporation doing business as LINDSLEY LUMBER CO.

Verdict—Filed Jan. 21, 1949

Miami, Florida
January 21, 1949.

We, the Jury, find the defendant JAY G. WILLIAMS, guilty of Counts 2, 4, 6 and 8 and the defendant, JOSEPH V. PERRY, not guilty of Counts 2-4-6-8 and the defendant, JOHN S. BOMBACI, not guilty of Counts 2-4-6-8 and the defendant, CHARLES R. FORD, not guilty of Counts 2-4-6-8 and the defendant, ANDREW J. YUHAS, not guilty of Counts 2-4-6-8 and the defendant, DANIA SUPPLY COMPANY, a corporation, doing business as LINDSLEY LUMBER, CO., not guilty of Counts 2-4-6-8.

So say we all.

/s/ M. L. BYRD
Foreman.

We, the Jury are unable to agree on Counts 1-3-5-7.
So say we all.

/s/ M. L. BYRD

775 In the United States District Court in and for the Southern District of Florida.

No. 7279-M-Crim.

UNITED STATES OF AMERICA

vs.

JAY G. WILLIAMS; JOSEPH V. PERRY; JOHN S. BOMBACI; CHARLES R. FORD; ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation.

Indictment (T. 18 USC § 51 (1946 Ed.) (T. 18 USC §52 (1946 Ed.)—Filed Nov. 15, 1948

The Grand Jury charges:

COUNT ONE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, Jay G. Williams, Joseph V. Perry and John S. Bombaci, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and Charles R. Ford, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, Andrew J. Yuhas and Lindsley Lumber Co., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate Frank J. Purnell, Jr., a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the
776 Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery,

by any person exercising the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Frank J. Purnell, Jr., in said shack and, while the said Frank J. Purnell, Jr., was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault, and torture the said Frank P. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing
5 illegal summary punishment upon the said Frank J. Purnell, Jr.; that the said conspiracy was formulated and entered into by the defendant CHARLES R. FORD, while
777 in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, and JOHN C. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT TWO

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office

and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miama, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivation of the rights,
privileges and immunities secured to him and pro-
778 tected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Frank J. Purnell, Jr., and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Frank J. Purnell, Jr., and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co.; and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley

Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the
779 Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this Court.

In violation of Section 52, Title 18, UNITED STATES CODE (1946 Ed.).

COUNT THREE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate Chester M. Robinson, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the cus-
780 tody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right

and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Chester M. Robinson and would cause the said Chester M. Robinson to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Chester M. Robinson in said shack and, while the said Chester M. Robinson was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault, and torture the said Chester M. Robinson, in order illegally to coerce and force the said Chester M. Robinson to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Chester M. Robinson to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Chester M. Robinson; that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

781 In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT FOUR

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipal-

ity of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Chester M. Robinson, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the
782 State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Chester M. Robinson and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co. at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Chester M. Robinson, and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Chester M. Robinson in order illegally to coerce and force the said Chester M. Robinson to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said Chester M. Robinson to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Chester M. Robinson.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

COUNT FIVE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, all of the above named persons being the defendants herein, conspired to injury, oppress, threaten, and intimidate Henry W. Priest, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, and the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons
784 acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance

with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Henry W. Priest, and would cause the said Henry W. Priest to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Henry W. Priest in said shack and, while the said Henry W. Priest was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault and torture the said Henry W. Priest in order illegally to coerce and force the said Henry W. Priest to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Henry W. Priest to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Henry W. Priest; that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

785 COUNT SIX

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regu-

lations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Henry W. Priest, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising
786 the authority of said state, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Henry W. Priest and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Henry W. Priest, and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Henry W. Priest in order illegally to coerce and force the said Henry W. Priest to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order to illegally coerce and force the said Henry W. Priest to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Henry W. Priest.

That at the time and places aforesaid, ANDREW J. YUHAS and Lindsley Lumber Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

787 COUNT SEVEN

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, and ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate John P. Sturniolo, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of

the State of Florida; that is to say, it was the plan
788 and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said John P. Sturniolo and would cause the said John P. Sturniolo to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said John P. Sturniolo in said shack and, while the said John P. Sturniolo was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault and torture the said John P. Sturniolo in order illegally to coerce and force the said John P. Sturniolo to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said John P. Sturniolo to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said John P. Sturniolo; that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT EIGHT

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and
789 JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the

ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected John P. Sturniolo, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested
790 and detained the said John P. Sturniolo and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co. at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said John P. Sturniolo, an while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said John P. Sturniolo in order illegally to coerce and force the said John P. Sturniolo to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said John P. Sturniolo to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said John P. Sturniolo.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

A true bill.

/s/ J. HOMER MERCER
Foreman

/s/ FRED BOTTS
Asst. United States Attorney

791 (Reverse Side)

United States District Court
Southern District of Florida
Miami Division

THE UNITED STATES OF AMERICA
vs.
JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, CHARLES R. FORD, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation.

Indictment

Vio.: T 18 USC 51 and 52 (1946 Ed.).
Civil rights.
A true bill.

/s/ J. HOMER MERCER
Foreman.

Filed in open court this 15th day of November, A. D. 1948.

EDWIN R. WILLIAMS,
Clerk.

By EARLE F. SPRIGG,
Deputy Clerk.

792 In the United States District Court

Case No. 7279-M-Cr.

Judgment and Commitment—Filed Feb. 11, 1949

On this 11th day of February, 1949, came the United States Attorney, and the defendant JAY G. WILLIAMS, appearing in proper person, and attended by his counsel, William J. Pruitt, Esq., and L. J. Cushman, Esq., and

The defendant having been convicted on verdict of guilty of Cts. #2, #4, #6 and #8 of the offense charged in the Indictment in the above-entitled cause, to wit:

Wilfully under color of law, subjected and caused certain persons, inhabitants of the State of Florida, to deprivation of their rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution of the United States.

And the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of

ONE YEAR on each of Counts 2, 4, 6 and 8, sentence on each Count to run consecutively.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) A. D. BARKSDALE,
United States District Judge.

793 In United States District Court

Order Dismissing Indictment—Filed March 28, 1950

The several motions to dismiss the indictment in this case were argued on the 23rd day of March 1950. The defendant Bombaci filed no motion but a ruling on the motions filed and argued will serve to dispose of the case as to Bombaci.

First I shall discuss the counts in this indictment dealing with the substantive counts in case No. 7279. Williams has been convicted on the substantive counts in said case No. 7279. It is the beating of the victims by Williams that was involved in the substantive counts in case No. 7279, on which he was convicted, that is involved in the counts in this perjury indictment with reference to alleged false swearing in case No. 7279. Conviction in this case, No. 7333, would constitute double jeopardy.

Ford, Bombaci and Yuhas were found not guilty on the substantive counts in case No. 7279. While the defendants Yuhas and the corporate defendant were charged in the substantive counts with aiding and abetting, the defendants Ford and Bombaci could have been found guilty under the general law of aiding and abetting. The jury's determination that they were not guilty was a determination of their guilt whether as principals or accessories. Whether they had seen or observed Williams beat the victims was a part and parcel of the charge against them in the substantive counts. Under the case of Ehrlich vs. United States, 145 F. (2) 693, the counts in this perjury indictment based on alleged false swearing in defending the charges contained in the substantive counts in No. 7279 are bad.

Next I will discuss the counts in this indictment charging perjury in the defense of the conspiracy counts in case No. 7279. Subsequent to the trial in case No. 7279, a new indictment was also found which has four counts under Section 19 (18 U. S. C. Sec. 51), substantially like the four conspiracy counts in case No. 7279. On this last indictment each defendant was convicted and sentenced, and
794 Williams, Bombaci, Perry and Ford appealed. The case was reversed and the indictment ordered quashed. Under these circumstances there was no jurisdiction or right to try the defendants on the conspiracy counts in case No. 7279, and the counts in this perjury indictment based on the conspiracy counts in case No. 7279 are bad.

The indictment in this case is dismissed as to all defendants.

Done and Ordered at Miami, Florida, this 28th day of March, 1950.

John W. Holland
United States District Judge

In United States District Court

Motion to Vacate Order Dismissing the Indictment and for Rehearing—Filed April 12, 1950

Comes now Fred Botts, Assistant United States Attorney, and moves the Court to vacate its order heretofore entered in this cause on March 28, 1950, wherein the said Court dismissed the indictment in said cause, and to enter an order vacating said order of dismissal and grant a rehearing and reargument in said cause for the following reasons:

1. The matter now presented is one of great importance in the administration of justice in that the Court manifestly misapprehended or failed to consider certain important and seemingly controlling principles of law, and, if the decision heretofore made is allowed to stand, the Court has established a precedent which, according to many well reasoned cases, (which will be called to the attention of the Court) will encourage perjury by defendants in criminal cases and make perjury by such defendants a safe procedure. (Note 1)

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2. The Court by its order and decision, if it is allowed to stand, has established a perfect defense to a charge of perjury against a defendant whose perjury was committed on a trial for some stated offense by holding that: (a) If the defendant be convicted the conviction bars a prosecution and trial for perjury committed in such trial, because such trial for perjury would constitute double jeopardy; and (b) If the defendant be acquitted, the acquittal constitutes an estoppel preventing prosecution for perjury committed by a defendant on trial in an attempt to secure his acquittal; and (c) If there be a mistrial, the former trial, notwithstanding there was no verdict, constitutes former jeopardy which will prevent a trial for perjury.

The Court, in making the rulings having the effect above stated has manifestly failed to consider the law applicable to such a situation as stated in the cases cited. (See Note 2)

Note 1:

Teague v. Commonwealth
172 Ky. 665
189 S. W. 908.
L. R. A. 1917 B. 733

Murff v. State
172 S. W. 238

Note 2:

See numerous cases cited as to Grounds 1 and 3.

3. The Court in finding and ruling as to the defendant Williams "conviction in case No. 7333 would constitute double jeopardy" has manifestly overlooked and failed to consider the fact that for the doctrine of double jeopardy to apply, *the two offenses must be identical in law and fact* (Note 3) and that by no stretch of the imagination could a beating alleged to have taken place on March 28, 1948, in an attempt to force a confession from the victim be
796 the same offense, or anything like the same offense as perjury on January 17, 1949, even though the perjury was committed in the trial of a former offense.

4. As to the conspiracy counts there was a mistrial and no verdict rendered, and there are no cases which hold that a mistrial constitutes an estoppel by virtue of the doctrine of double jeopardy (note 4), and that as to the conspiracy counts, even if the offenses were identical in law and fact, there would not be an estoppel, under the principle of double jeopardy, to a re-trial of the case of conspiracy, or to a trial of perjury if that offense were held to be identical in law and fact and, therefore, manifestly the Court failed to consider that there is no principle of law remotely appli-

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NOTE 3:

Morehead v. U. S.
270 Fed. 210 on 212

Morgan v. Devine
237 U. S. 632,
59 L. Ed. 1153

Burton v. U. S.
202 U. S. 344,
50 L. Ed. 1057 on 1070

Bartlett v. U. S.
166 Fed. 2nd, 928 on 931

Curtis v. U. S.
67 Fed. 2nd, 552 on 553

Jay v. State
73 So. 137 on 138-39

Miller v. U. S.
300 Fed. 529 on 532-33

Miles v. State
165 S. W. 567

Wadlington v. Commonwealth
59 S. W. 851

See brief pages 12-16

NOTE 4:

No cases need be cited that a mistrial estops another trial under the principle of double jeopardy. As to the counts based on the conspiracy counts the Court grounds its ruling on the invalidity of the conspiracy counts, which is covered by other grounds of the motion.

cable holding that as to the perjury counts based on the conspiracy indictments, a trial for perjury would con-
797 stitute double jeopardy.

5. The Court predicates its ruling on the Ford, Bombaci and Yuhas counts related to the trial of the substantive charges on which Williams was convicted and the others acquitted, on the law with respect to the trial of accomplices, and on the law with respect to principals and accessories, and asserts that whether or not Ford, Bombaci and Yuhas had seen or observed Williams in the act of beating the alleged victims was "a part and parcel of the charge against them in the substantive counts." The Court then, on the basis of the facts last mentioned in the above quotation grounds its ruling on the law laid down in the Erlish case.

In so doing the Court overlooked and failed to consider that in the Erlish case the rule is laid down which holds that perjury will not lie if the trial of the perjury case would be in effect a re-trial of the previous case so that a verdict of guilty in the perjury case would necessarily imply a contradiction of the verdict of acquittal, and that in respect to the charges of perjury

(a) The fact that Ford, Bombaci and Yuhas had "seen and observed" Williams in the act of beating the victims, was not the charge being tried, and that the fact that Ford, Bombaci and Yuhas had seen this beating, standing alone, would not make them guilty as aiders and abetters, or as principals. Hence the vact (vel non) that they had seen the beating, was not the fact on trial, and that a finding in the perjury case that they had seen the beating, would in no way impeach the verdict acquitting them as to substantive counts.

798 (b) The fact of the presence of Ford, Bombaci and Yuhas, while Williams was beating the victims (which beating—but not the presence of Ford, Bombaci and Yuhas, the verdict of guilty as to Williams affirmed) was, by no stretch of the imagination the issue on trial. Therefore it is plain that a verdict in the perjury case which would in effect affirm only that Ford, Bombaci and Yuhas were present and saw the beating, and therefore testified falsely when they swore that they did not see and observe the beating, could not possibly import a contradiction of a verdict which merely found that they did not beat the victims.

(c) No one with any regard for the facts can, in good faith, assert that a charge that certain victims

(1) were arrested,
(2) by certain officers, and
(3) by them taken to a certain shack, and
(4) were in said shack beaten and abused,
(5) for the purpose of extorting confessions of guilt, and
(6) that the defendants named in the perjury counts participated in the beating.

which was the charge on trial as to the substantive counts is the *very identical charge* involved in imputing perjury to one who was present, and saw the beating, and, nevertheless sworn that he had not "observed and seen" one Williams in the act of administering the beatings, so that a verdict of guilty of perjury on a charge that the defendant had "observed and seen" the beating by Williams and swore under oath that he had not "observed and seen" the same, would necessarily import a contradiction of a verdict of not guilty of the substantive charge as stated above. And unless a verdict of guilty in the perjury case would necessarily import a contradiction of the verdict of not guilty as to the substantive counts, the Erlich case is wholly inapplicable.

6. The Court predicates its ruling as to all the perjury counts which allege false swearing material to the
799 conspiracy counts, upon the sole ground that these counts have now been held to charge no offense. The Court says: "Under these circumstances there was no jurisdiction or right to try the defendants on conspiracy counts in case No. 7279, and the counts in this perjury indictment based on the conspiracy counts in case No. 7279 are bad."

In so ruling the Court overlooked and failed to consider the law, established, so far as we can ascertain without any dissent, that

(1) Invalidity of the indictment did not oust the Court's jurisdiction.

(2) Perjury may be predicated on false swearing in a trial, notwithstanding the fact that error was committed in the trial requiring reversal, or the indictment on trial was found to be bad.

(3) Jurisdiction is the right to hear and determine a cause. And no one will contend that the Court did not have jurisdiction to consider an indictment based on Title 18, Section 51; and that the Court had jurisdiction of the per-

sons of the defendants. Under these circumstances, the invalidity of the indictment merely produced error, not lack of jurisdiction (Note 5)

800 See discussion and authorities: Brief pages 8 to 11.

FRED BOTTS
Fred Botts
Assistant United States Attorney

In United States District Court

Order Denying Motion to Vacate and for Reargument—Filed April 12, 1950

Motion to quash the Court's order of March 28, 1950, and to grant a rehearing and reargument was presented to the Court on April 10, 1950. The Court has re-examined its ruling in order to determine whether a reargument will be had.

As to Williams and the counts in this indictment based on false swearing in defendant the substantive counts in Case No 7279, the Court adheres to its opinion that conviction here would constitute double jeopardy.

As to Ford, Bombaci and Yuhas, and the counts in this indictment based on false swearing in defendant the substantive counts in Case No. 7279, the Court adheres to its opinion expressed in said order of March 28, 1950.

As to the counts in this indictment charging perjury in the defense of the conspiracy counts in Case No. 7279, the Court is of the opinion that the holding of the Court of Appeals in the Williams Case, 179 F. (2) 644, as to indictment in the new conspiracy case is to the effect that the

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NOTE 5:

State v. Rowell
78 Vt. 28.
47 Atl. 111
82 Am. St. Rep. 918

State v. Brown
38 Atl. 713

Marford v. State
63 Pas. 953
54 L. R. A. 513, And extensive note.

41 Am. Jur (Per jury) Par. 23, page 15

Wharton Criminal Law
12th Ed.
Par. 1538

West v. U. S.
258 Fed. 413, Text 416-417

Kelly v. State
103 S. W. 189

conspiracy counts in case No. 7279 were bad to the extent that there was no jurisdiction to try the defendants on the conspiracy counts in Case No. 7279, and that a charge of false swearing in the defense of said charges of conspiracy under 18 U. S. C. §51, would not lie.

Being of the opinion expressed, a reargument should not be ordered. The said motion is denied.

801 DONE AND ORDERED at Miami, Florida, this 12 day of April, 1950.

JOHN W. HOLLAND
United States District Judge

In United States District Court

Notice of Appeal—Filed May 11, 1950

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the Southern District of Florida, Miami Division, entered March 28, 1950, motion for rehearing denied April 12, 1950, dismissing the indictment charging the defendants with perjury in violation of 18 U. S. C. 1621.

Dated May 11, 1950.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.
Department of Justice,
Washington, D. C.

814 In United States District Court

Stipulation—Filed May 12, 1950

It is hereby stipulated and agreed that on March 25, 1949, the defendants in the above entitled cause were arraigned, that at that time the defendant John S. Bombaci appeared in person; that at that time it was stipulated and agreed verbally between the attorney for the United States and John S. Bombaci that the said Bombaci should have the benefit, as if filed on his behalf, of any grounds of attack on said indictment which might be interposed on behalf of the defendants Jay G. Williams, Charles R. Ford and Andrew J. Yuhas, and it was on that day agreed that the attorneys for Charles R. Ford, to-wit, John R. Marsh; Jay G Williams, to-wit, Riley & Dressler and A. C. Dressler; Andrew

J. Yuhas, to-wit, Roberts, Holland and Strickland; that said John R. Marsh, Riley and Dressler, and Roberts, Holland and Strickland would appear on behalf of said John S. Bombaci.

It is further stipulated that when the several motions to dismiss filed on behalf of Jay G. Williams, Charles R. Ford and Andrew J. Yuhas were argued in this cause, resulting in the order dismissing said indictment being entered on the 28th day of March, 1950, the attention of the Court was directed to the fact that no formal motion had been filed on behalf of the said Bombaci, and it was then and there verbally stipulated and agreed, with the approval of the Court, that John S. Bombaci should have the benefit of any ground of attack made on behalf of any one or more of the other defendants, as if said ground of attack had been specifically interposed on his behalf.

It is further stipulated that the reference to the defendant John S. Bombaci contained in the order dated
815 March 28, 1950, was incorporated in said order based upon and to make effective the verbal stipulation which had theretofore been made before the Court as aforesaid.

It is further stipulated that in any appeal filed in this cause, the said Bombaci shall have the benefit of the stipulations, agreements and understandings hereinbefore referred to.

/s/ FRED BOTTS
Fred Botts
Assistant U. S. Attorney

/s/ A. C. DRESSLER
Counsel for Appellee Jay G. Williams and John S. Bombaci.

/s/ JOHN D. MARSH
Counsel for Appellees Charles R. Ford and John S. Bombaci.

/s/ ERNEST E. ROBERTS
Counsel for Appellees Andrew J. Yuhas and John S. Bombaci.

The facts stated in this stipulation are in accord with the Court's recollection, and the said stipulation is approved by the Court.

/s/ JOHN W. HOLLAND
United States District Judge

816 In United States District Court

Designation of Contents of Record on Appeal—Filed May 12, 1950

To the Clerk of said Court:

You are hereby requested to make a transcript of the Record of Appeal to be filed in the Supreme Court of the United States, pursuant to Notice of Appeal heretofore filed herein, and to include in such transcript of record copies of the following:

(1) The indictment.

(2) Motion of Charles R. Ford to dismiss indictment, filed May 2, 1949.

(3) Motion of Jay G. Williams to dismiss indictment, filed May 2, 1949.

(4) Motion of Andrew J. Yuhas, to dismiss the indictment, filed May 2, 1949.

(5) Stipulation dated March 28, 1950 and signed by Fred Botts, Assistant U. S. Attorney; A. C. Dressler, attorney for defendant Jay G. Williams; John D. Marsh and A. C. Dressler, attorneys for defendant John S. Bombaci; Ed Strickland, attorney for defendant Andrew J. Yuhas, and John D. Marsh, attorney for defendant Charles R. Ford.

(6) Transcript of testimony in Case No. 7279 consisting of two volumes of testimony, together with the order
817. of the Judge appended thereto, as filed in evidence March 28, 1950.

(7) Verdict of the jury entered January 21, 1949, in the case of United States v. Jay G. Williams, *et al.*, Case No. 7279-M-CR., mentioned in stipulation dated March 28, 1950, which stipulation was hereinbefore ordered incorporated into this record.

(8) Indictment in case No. 7279-M-CR., mentioned on page 2 of stipulation filed March 28, 1950.

(9) Judgment and commitment dated and entered February 11, 1949, in the case of United States v. Jay G. Williams, *et al*, No. 7279-M-CR., as recorded in minute book 35 at pages 406-407 of the District Court for the Southern District of Florida, as mentioned in stipulation filed March 28, 1950.

(10) Order dated March 28, 1950, dismissing indictment.

(11) Motion to vacate the order entered on March 28, 1950, and granting a rehearing and argument of the several motions to dismiss said indictment, which motion was filed on April 12, 1950.

(12) Order dated April 12, 1950, and filed April 12, 1950, denying motion for reargument and motion to vacate the order of March 28, 1950.
(13) Notice of appeal herein filed on May 11, 1950.
(14) Statement as to jurisdiction filed May 11, 1950.
(15) Notice to attorneys for appellees filed herein on May 12, 1950.

(17) This designation of contents of record and
818 proof of service thereof.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General
Department of Justice,
Washington, D. C.

UNITED STATES OF AMERICA, APPELLANT
HERBERT S. PHILLIPS, U. S. Attorney
By FRED BOTTS
Fred Botts,
Assistant U. S. Attorney

Received a copy of the above Designation of Contents of the Record, and service thereof accepted.

RILEY & DRESSLER
By A. C. DRESSLER
Counsel for appellee Jay G. Williams and John S. Bombaci

JOHN D. MARSH
Counsel for appellees Charles B. Ford and John S. Bombaci

ERNEST E. ROBERTS
Counsel for Appellees Andrew J. Yuhas and John S. Bombaci

819 Clerk's Certificate to foregoing transcript omitted in printing.

820 Supreme Court of the United States
No. 134 , October Term, 1950

Order Noting Probable Jurisdiction—October 16, 1950.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following No. 365, Williams vs. United States.

821 In the Supreme Court of the United States
October Term, 1950

No. 134

Statement of Points to be Relied Upon—Filed October 28.

Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the conviction of appellee Williams under Section 20 of the Criminal Code, 18 U.S.C. (1946 ed.) 52, barred the instant prosecution for perjury under 18 U.S.C. 1621 for false statements made during the course of the trial.

2. The District Court erred in holding that the acquittal of appellees Ford, Bombaci and Yuhas in the prosecution under Section 20 of the Criminal Code barred the instant prosecution for perjury for false statements made during the course of the trial.

3. The District Court erred in holding that appellees could not be prosecuted for perjury for false statements made during the course of their trial for conspiracy under Section 19 of the Criminal Code, 18 U.S.C. (1946 ed.) 51, in view of the fact that a superseding indictment under which they were later tried was subsequently held to be invalid by the Court of Appeals.

4. The District Court erred in dismissing the indictment.

822 The parts of the record to be printed are designated in the attached stipulation between the parties.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

823 In the Supreme Court of the United States
October Term, 1950

No. 134

Stipulation as to Printing of Record—Filed October 28, 1950.

The perjury charges involved in this case arose out of the trial of appellees under an indictment charging violations of Sections 19 and 20 of the Criminal Code, 18 U.S.C. (1946 ed.) 51, 52. The reporter's transcript of the trial in that case is part of the record on the direct appeal in the

instant case. That transcript is also before this Court as part of the record in No. 365, *Jay G. Williams* v. *United States*, certiorari granted October 16, 1950. Since the entire record in No. 365 is now being printed under the supervision of the Clerk, it is hereby stipulated, subject to the approval of the Court, that the aforesaid transcript of the trial in that case need not be included in the printed record in this case, but may be incorporated by reference to the printed record in No. 365.

The perjury indictment involved in this case consists of 12 counts against each of the four appellees. Counts 1, 2 and 3 are typical of all 12 counts against appellee Williams and counts 4, 5 and 6 against appellee Ford are typical of the remaining counts against him and the counts
824 against appellees Bombaci and Yuhas. In order to simplify the record and avoid repetition, it is further stipulated that only counts 1-6, inclusive, need be printed.

PHILIP B. PERLMAN,
Philip B. Perlman,
Solicitor General,
Counsel for Appellant.

BART A. RILEY
A. C. DRESSLER
Counsel for Appellees
Jay G. Williams and
John S. Bombaci

JOHN D. MARSH
Counsel for Appellees
Charles R. Ford and
John S. Bombaci

ROBERTS, HOLLAND & STRICKLAND
ERNEST E. ROBERTS,
Counsel for Appellees
Andrew J. Yuhas and
John S. Bombaci

U. S. GOVERNMENT PRINTING OFFICE 912220 NO. 8 1950

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CLERK

No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND ANDREW J. YUHAS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 134

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND ANDREW J. YUHAS

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court entered in this cause dismissing the indictment.

OPINIONS BELOW

The orders of the District Court dismissing the indictment and denying the Government's motion

for rehearing are not reported. Copies of these orders embodying the opinion of the court are attached hereto as the Appendix.

JURISDICTION

The order of the District Court dismissing the indictment was entered on March 28, 1950, and the order denying the Government's motion for rehearing was entered on April 12, 1950. The jurisdiction of the Supreme Court to review on direct appeal the decision of the District Court sustaining, prior to the attachment of jeopardy, the defendants' plea in bar to the indictment is conferred by 18 U.S.C. 3731. The following decisions sustain the jurisdiction of the Supreme Court: *United States* v. *Hark*, 320 U. S. 531; *United States* v. *Murdock*, 284 U. S. 141; *United States* v. *Goldman*, 277 U. S. 229; *United States* v. *Oppenheimer*, 242 U. S. 85; cf. *United States* v. *Storrs*, 272 U. S. 652.

QUESTIONS PRESENTED

1. Whether the conviction of defendant Williams under Section 20 of the Criminal Code, 18 U. S. C. (1964 ed.) 52, barred the instant prosecution for perjury under 18 U. S. C. 1621 for false statements made during the course of the trial.

2. Whether the acquittal of defendants Ford, Bombaci and Yuhas in the prosecution under Section 20 of the Criminal Code barred the instant prosecution for perjury for false statements made during the course of the trial.

3. Whether the defendants could be prosecuted for perjury for false statements made during the course of their trial for conspiracy under Section 19 of the Criminal Code, 18 U. S. C. (1946 ed.) 51.

in view of the fact that a superseding indictment under which they were later tried was subsequently held to be invalid by the Court of Appeals.

STATUTE INVOLVED

18 U. S. C. 1621 provides:

> Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT

An indictment in 48 counts was filed in the District Court on February 25, 1949, charging the defendants separately with various acts of perjury in the course of their earlier trial under an indictment charging them with conspiracy under Section 19 of the Criminal Code[1] and with substantive

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[1] "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

offenses under Section 20 of the Criminal Code,[2] 18 U. S. C. (1946 ed.) 51 and 52. In brief, defendant Williams was charged with having falsely testified at the earlier trial that he did not beat the victims of the violations of Sections 19 and 20, and the other defendants were charged with perjury in denying that the victims were beaten by Williams in their presence. Williams had been convicted of the substantive offenses under Section 20 and his conviction was affirmed by the Court of Appeals for the Fifth Circuit, 179 F. 2d 656, petition for a writ of certiorari pending, No. 354 Misc. The other defendants had been acquitted on the substantive charges and the jury failed to agree on a verdict on the conspiracy counts under Section 19. A superseding indictment was later returned under Section 19 and the Defendants were retried and convicted. On appeal, the Court of Appeals reversed the conviction and directed that the indictment be quashed. *Williams et al. v. United States*, 179 F. 2d 644, petition for a writ of certiorari pending, *United States* v. *Williams et al.*, No. 659.

The defendants Williams, Ford and Yuhas moved to dismiss the perjury indictment and on March 28, 1950, the District Court dismissed it as to all the defendants, holding:

1. Conviction of Williams on the perjury charges relating to the Section 20 counts would constitute

[2] "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

double jeopardy, because his conviction on those counts involved "the beating of the victims" and the beatings are "involved in the counts in this perjury indictment."

2. Since defendants Ford, Bombaci and Yuhas were adjudged not guilty under the Section 20 counts, either as principals or accessories, they were found not to have "seen or observed Williams beat the victims," for this "was a part and parcel of the charges against them" in the Section 20 counts, and therefore the counts in the perjury indictment based on alleged false swearing in respect of the Section 20 counts "are bad."

3. Since the superseding conspiracy indictment under Section 19 on which all the defendants were tried, convicted and sentenced was ordered quashed by the Court of Appeals, "there was no jurisdiction or right to try the defendants on the [original] conspiracy counts * * * and the counts in this perjury indictment based on the conspiracy counts * * * are bad."

In its order and opinion of April 12, 1950, denying the Government's motion for rehearing, the District Court stated that it had reexamined its ruling of March 28, 1950, and adhered to its original decision.[3]

THE QUESTIONS ARE SUBSTANTIAL

The issues involved in this appeal are of importance in the administration of the criminal law,

[3] Since, in respect of each ground of the District Court's decision, the effect is to bar prosecution for the offenses charged, the decision is one sustaining a motion in bar within the meaning of the Criminal Appeals Act, 18 U. S. C. 3731. See *United States v. Hark*, 320 U. S. 531, and the other cases cited above as sustaining the jurisdiction of the Supreme Court.

for the effect of the decision of the District Court is to grant an unwarranted immunity to defendants in criminal trials who falsely testify. There is no rule of law which permits perjury to be committed by a defendant who waives his immunity under the Fifth Amendment to the Constitution and chooses to testify at his trial. The oath taken by a defendant should, and does, have the same meaning as the oath taken by any other witness.

1. The prosecution of defendant Williams for perjury would not constitute double jeopardy, since that doctrine applies only where the two offenses with which the defendant has been charged are identical in law and in fact. E. g., *Burton* v. *United States*, 202 U. S. 344; *Gavieres* v. *United States*, 220 U. S. 338. "It is only an identity of offenses which is fatal." *Pinkerton* v. *United States*, 328 U. S. 640, 644. Obviously, perjury committed on the trial of the defendant for another offense is distinct in law and fact from that offense and a prior conviction or acquittal does not constitute former jeopardy as to a prosecution for such perjury. *Youngblood* v. *United States*, 266 Fed. 795, 797-798 (C. A. 8); *Allen* v. *United States*, 194 Fed. 664 (C. A. 4); *United States* v. *Butler*, 38 Fed. 498 (D. C. E. D. Mich.).

2. The acquittal of defendants Ford, Bombaci and Yuhas on the substantive counts under Section 20 did not constitute an adjudication of the issues of fact involved in the instant prosecution for perjury. As to these defendants, the question is whether the facts testified to and as to which perjury is charged were necessarily adjudicated by the verdict of acquittal. Cf. *Sealfon* v. *United States*, 332 U. S. 575, 578-579. If the alleged

false swearing was as to a subordinate evidential matter and not a general denial, the prior acquittal does not bar a prosecution for perjury. *Kuskulis* v. *United States*, 37 F. 2d 241 (C. A. 10); *Lipscomb* v. *United States*, 33 F. 2d 33 (C. A. 8); *Youngblood* v. *United States*, 266 Fed. 795 (C. A. 8); *Chitwood* v. *United States*, 178 Fed. 442 (C. A. 8). Under the indictment and the District Court's charge to the jury in the Section 20 case, Ford was charged as a principal and Bombaci and Yuhas as aiders and abettors in activities constituting violations of the statute; that is, Ford and others allegedly detained and beat the named victims, aided and abetted by Bombaci and Yuhas, in deprivation of the victims' rights and privileges, including the rights to due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment. The perjury indictment charged these defendants with having testified falsely when they stated that they had not seen and observed Williams in the act of striking and beating the victims. That Williams engaged in these activities was established by his conviction in the Section 20 case. It was never adjudged that Ford, Bombaci or Yuhas had not seen or observed Williams engage in such activities. These defendants were acquitted of having engaged in the activities themselves, or of having aided and abetted in their performance; they were not acquitted of observing them being carried on. It is noteworthy in this connection that the trial court carefully charged the jury that Bombaci and Yuhas could not be held guilty as aiders and abettors merely because they were present when the beatings occurred. Consistently with the verdict of not guilty, Bombaci and Yuhas could have been

present at the beatings in question. There was no adjudication of this fact and the acquittals could not have been res judicata. And, for the reasons stated above, the same result would have followed even if the trial court had not given such instructions as to Bombaci and Yuhas.

Ehrlich v. *United States*, 145 F. 2d 693 (C. A. 5), upon which the District Court relied, is not authority to the contrary, since the decision in that case was predicated upon a finding that the fact testified to, and as to which the perjury was charged, was the very fact which constituted the basis of the original charge upon which the defendant had been acquitted. Hence, that decision is consistent with the general rule enunciated in the cases cited above.

3. The subsequent decision of the Court of Appeals invalidating the superseding conspiracy indictment under Section 19[4] did not vitiate the jurisdiction of the trial court to try the conspiracy counts of the original indictment. The trial court had jurisdiction over the parties and the subject-matter. Even if it erred in sustaining the validity of Section 19 as applied in the indictment, its jurisdiction was not divested by the subsequent decision of the Court of Appeals. Cf. *United States* v. *United Mine Workers*, 330 U. S. 258, 289-295. It has often been held that a subsequent determination of invalidity of a statute upon which an indictment was based does not bar a prosecution for perjury committed at the trial of the indictment. *Boehm* v. *United States*, 123 F. 2d 791, 809 (C. A. 8), certiorari denied, 315 U. S. 800; *State* v.

[4] As noted above, a petition for a writ of certiorari to review this decision is now pending in the Supreme Court, No. 659.

Rowell, 72 Vt. 28, 47 Atl. 111; *State* v. *Mandehr,* 168 Minn. 139, 209 N. W. 750; *Kelly* v. *State,* 51 Tex. Crim. Rep. 507, 103 S. W. 189. See also *West* v. *United States,* 258 Fed. 413, 416-417 (C. A. 6); 2 Wharton, *Criminal Law,* Sec. 1538 (12th ed., 1932). Cf. *Knapp* v. *United States,* 302 U. S. 214; *Kay* v. *United States,* 303 U. S. 1, 6.

We submit that the decision of the District Court is wrong in all of its aspects and that the questions presented by this appeal are substantial ones which should be settled by the Supreme Court.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

MAY, 1950.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

No. 7333-M-Criminal

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND ANDREW J. YUHAS, DEFENDANTS

ORDER

The several motions to dismiss the indictment in this case were argued on the 23rd day of March 1950. The defendant Bombaci filed no motion but a ruling on the motions filed and argued will serve to dispose of the case as to Bombaci.

First I shall discuss the counts in this indictment dealing with the substantive counts in case No. 7279. Williams has been convicted on the substantive counts in said case No. 7279. It is the beating of the victims by Williams that was involved in the substantive counts in case No. 7279, on which he was convicted, that is involved in the counts in this perjury indictment with reference to alleged false swearing in case No. 7279. Conviction in this case, No. 7333, would constitute double jeopardy.

Ford, Bombaci and Yuhas were found not guilty on the substantive counts in case No. 7279. While the defendants Yuhas and the corporate defendant were charged in the substantive counts with aiding and abetting, the defendants Ford and Bombaci could have been found guilty under the general law of aiding and abetting. The jury's determination that they were not guilty was a determination of their guilt whether as principals or accessories. Whether they had seen or observed Williams beat the victims was a part and parcel of the charge against them in the substantive counts. Under the

case of Ehrlich vs. United States, 145 F. (2d) 693, the counts in this perjury indictment based on alleged false swearing in defending the charges contained in the substantive counts in No. 7279 are bad.

Next I will discuss the counts in this indictment charging perjury in the defense of the conspiracy counts in case No. 7279. Subsequent to the trial in case No. 7279, a new indictment was also found which has four counts under Section 19 (18 U. S. C. Sec. 51), substantially like the four conspiracy counts in case No. 7279. On this last indictment each defendant was convicted and sentenced, and Williams, Bombaci, Perry and Ford appealed. The case was reversed and the indictment ordered quashed. Under these circumstances there was no jurisdiction or right to try the defendants on the conspiracy counts in case No. 7279, and the counts in this perjury indictment based on the conspiracy counts in case No. 7279 are bad.

The indictment in this case is dismissed as to all defendants.

Done and Ordered at Miami, Florida, this 28th day of March, 1950.

(S.) JOHN W. HOLLAND,
United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION

No. 7333-M-Criminal

UNITED STATES OF AMERICA, PLAINTIFF,

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI AND ANDREW J. YUHAS, DEFENDANTS

ORDER

Motion to quash the Court's order of March 28, 1950, and to grant a rehearing and reargument was presented to the Court on April 10, 1950. The Court has re-examined its ruling in order to determine whether a reargument will be had.

As to Williams and the counts in this indictment, based on false swearing in defending the substantive counts in Case No. 7279, the Court adheres to its opinion that conviction here would constitute double jeopardy.

As to Ford, Bombaci and Yuhas, and the counts in this indictment based on false swearing in defending the substantive counts in case No. 7279, the Court adheres to its opinion expressed in said order of March 28, 1950.

As to the counts in this indictment charging perjury in the defense of the conspiracy counts in case No. 7279, the Court is of the opinion that the holding of the Court of Appeals in the Williams Case, 179 F. (2) 644, as to indictment in the new conspiracy case, is to the effect that the conspiracy counts in case No. 7279 were bad to the extent that there was no jurisdiction to try the defendants on the conspiracy counts in case No. 7279, and that a charge of false swearing in the defense of said charges of conspiracy under 18 U. S. C. 51, would not lie.

Being of the opinion expressed, a reargument should not be ordered. The said motion is denied.

Done and Ordered at Miami, Florida, this 12 day of April, 1950.

(S.) JOHN W. HOLLAND,
United States District Judge.

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No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1950

UNITED STATES OF AMERICA, APPELLANT

v.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND ANDREW J. YUHAS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court rendered no formal opinion. Its order dismissing the indictment, which discloses the grounds of its decision, appears at R. 43–44.

JURISDICTION

The order of the District Court dismissing the indictment was entered on March 28, 1950 (R. 43–44), and the Government's motion to vacate the order of dismissal and for rehearing (R. 45–49) was denied on April 12, 1950 (R. 49–50). The United States filed its notice of appeal to

this Court on May 11, 1950 (R. 50). Probable jurisdiction was noted by this Court on October 16, 1950 (R. 53). The jurisdiction of this Court to review on direct appeal the judgment of the District Court sustaining, prior to the attachment of jeopardy, the defendants' pleas in bar to the indictment is conferred by 18 U. S. C. 3731. See also Rules 37 (a) (2) and 45 (a), F. R. Crim. P.; *United States* v. *Murdock*, 284 U. S. 141, 146–147.

QUESTIONS PRESENTED

1. Whether the prior conviction of Williams under Section 20 of the Criminal Code for depriving certain persons of their constitutional rights under color of law bars his prosecution for perjury, in testifying that he had not beaten those persons, on the ground of double jeopardy.

2. Whether the acquittal of Ford, Bombaci, and Yuhas under Section 20 of the Criminal Code on a charge of depriving certain persons of their constitutional rights under color of law bars their prosecution for perjury, in testifying that they had not seen Williams beat those persons, on the ground that their acquittal is *res judicata* on the issue of the truthfulness of that part of their testimony.

3. Whether the fact that convictions of certain defendants on conspiracy charges under Section 19 of the Criminal Code were set aside on a question of construction of the statute (review of which is now pending before this Court in No.

26) bars their prosecution for perjury based on testimony given at a prior trial on similar charges in which the jury reached no verdict.

STATUTE INVOLVED

18 U. S. C. 1621 provides:

> Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT

This is an appeal from an order of the District Court for the Southern District of Florida (R. 43–44) dismissing a 48-count indictment for perjury allegedly committed by the appellees while testifying on their own behalf at a criminal trial in that court (R. 1–22; and see R. 55). The circumstances leading up to the return of this indictment, the nature of its charges, and the grounds on which it was dismissed may be summarized as follows:

1. On November 15, 1948, an indictment in eight counts (R. 30–42) was filed in the District Court for the Southern District of Florida against the four appellees herein—Jay G. Williams, Charles R. Ford, John S. Bombaci, and Andrew J. Yuhas—and two other defendants, Joseph V. Perry and the Dania Supply Company (referred in the indictment as "Lindsley Lumber Co."), a corporation. Count 2 (R. 31–33) charged that on or about March 28, 1947, Williams, Ford, Bombaci, and Perry, acting under color of law, willfully caused one Frank J. Purnell, Jr., to be subjected to deprivation of certain rights, privileges, and immunities secured to him by the Fourteenth Amendment of the United States Constitution, in violation of Section 20 of the Criminal Code of 1909.[1] Specifi-

[1] Section 20 of the Criminal Code of 1909 (18 U. S. C. [1946 ed.] 52; now 18 U. S. C. 242) provided in pertinent part:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States * * * shall be fined not more than $1,000, or imprisoned not more than one year, or both."

The rights, privileges, and immunities of which Purnell had allegedly been deprived were "the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of

cally, it was charged that these four defendants, being police officers of the city of Miami, Florida,[2] arrested Purnell and took him to a shack on the premises of the Dania Supply Company, where they physically beat and tortured him in order to coerce him to admit guilt of certain alleged thefts of property from the Dania Supply Company and to implicate other persons as participants in the thefts, and for the purpose of "imposing illegal summary punishment" upon him (R. 32–33). The Dania Supply Company and the appellee Andrew J. Yuhas, the "comptroller" of the company,[3] were also named as defendants, being charged as aiders and abettors of the four principal defendants (R. 33).

Counts 4, 6, and 8 (R. 34–36, 37–39, 40–42) were identical with count 2, except that a different victim was named in each count, these additional victims being Chester M. Robinson (count 4), Henry W. Priest (count 6), and John P. Sturniolo (count 8).

Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the state of Florida" (R. 32).

[2] The defendant Ford was described as a regularly employed police officer of the city (R. 32), the other three, Williams, Perry, and Bombaci, as "special police officers under written authority from the Director of Public Safety of the" city (R. 31).

[3] See p. 252 of the record in No. 365, which, by stipulation, is made a part of the record in the instant case (R. 54–55).

Counts 1, 3, 5, and 7 (R. 30–31, 33–34, 36–37, 39–40) charged the same six defendants named in the even-numbered counts with having conspired "to injure, oppress, threaten, and intimidate [the respective victims named in the even-numbered counts] in the free exercise and enjoyment of the rights and privileges" guaranteed to them by the Fourteenth Amendment, in violation of Section 19 of the Criminal Code of 1909,[4] the alleged object of the conspiracy in each instance being the commission of the substantive offense charged in the corresponding even-numbered count.

At the trial of the foregoing indictment, each of the four named victims testified for the Government that he was physically beaten and tortured by the defendant Williams in the shack on the premises of the Dania Supply Company,

[4] Section 19 of the Criminal Code of 1909 (18 U. S. C. [1946 ed.] 51; now 18 U. S. C. 241) provided in pertinent part:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, * * * they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

The rights and privileges, of which, according to the conspiracy counts, the defendants conspired to deprive their victims, were the same rights and privileges of which they did in fact deprive them according to the charges of the substative counts (see fn. 1, *supra*, pp. 4–5).

as charged in the indictment, and that these beatings were inflicted in the presence and view of the other individual defendants—Ford, Bombaci, Perry, and Yuhas (Record, No. 365, pp. 29–32, 55–57, 77–80, 102–105).[5] Williams, testifying on his own behalf and on behalf of his codefendants, denied having beaten any of the victims (*id.*, pp. 214, 215, 218). The other appellees herein—Ford, Bombaci, and Yuhas—also took the witness stand as witnesses on their own behalf and for the defense generally, and denied not only that they themselves had beaten any of the victims (*id.*, pp. 192–196, 203, 261–262), but also denied that they had seen Williams or anybody else beat them (*id.*, pp. 193–196, 202–206, 253–262), though all admitted being present in the shack during the interrogations of at least some of the victims, when, according to the latter, the beatings were inflicted by Williams.[6]

[5] The victims' testimony was thoroughly corroborated, the corroborating evidence including, *inter alia*, the testimony of one Giroux (Record, No. 365, pp. 121–126), who had been named as a defendant in an earlier indictment, to which he had pleaded guilty (*id.* pp. 121, 127–128).

[6] Ford admitted being present during the interrogation of Purnell (Record, No. 365, pp. 191–193), Robinson (*id.*, pp. 195–196), and Sturniolo (*id.*, p. 196), but not during the interrogation of Priest (*id.*, 197). Bombaci admitted being present during the interrogations of Robinson and Sturniolo (*id.*, pp. 204, 206–207) but not during the interrogations of Purnell and Priest (*id.*, pp. 203, 204, 206, 207). Yuhas admitted being present during the interrogations of all four victims (*id.*, pp. 254–260).

The jury found Williams guilty on all four of the substantive counts (2, 4, 6, and 8).[7] His five codefendants—Ford, Bombaci, Perry, Yuhas, and the Dania Supply Company—were found not guilty on those counts (R. 29). The jury reported inability to agree upon verdicts as to all six defendants under the four conspiracy counts (1, 3, 5, and 7) (*ibid.*).[8]

2. On February 25, 1949, the perjury indictment which gave rise to the present proceeding was filed (R. 1–22; and see R. 55). It charged in substance that the appellee Williams gave false testimony under oath when he denied, as a witness on his own behalf and on behalf of his codefendants at the trial of the earlier indictment, that he had beaten and tortured the four victims named

[7] Williams was sentenced to one year's imprisonment on each of these four counts, the terms to run consecutively (R. 43), and his conviction was affirmed by the Court of Appeals for the Fifth Circuit, *Williams* v. *United States*, 179 F. 2d 656, pending on writ of certiorari, No. 365, granted October 16, 1950.

[8] Subsequently, a new indictment, in four counts, was returned against these six defendants, charging them, in substantially the language of the conspiracy counts of the earlier indictment, with having conspired to deprive the four victims in question of their constitutional rights. A new jury convicted all six defendants on all four counts of this new indictment. Four of the defendants appealed to the Court of Appeals for the Fifth Circuit, which, on grounds not relevant to the instant case, reversed their convictions and directed quashing of the indictment as to them. *Williams* v. *United States*, 179 F. 2d 644, pending on writ of certiorari, No. 26, granted October 16, 1950.

in that indictment at the time and place specified therein; and that the other appellees—Ford, Bombaci, and Yuhas—gave false testimony under oath when they denied, as witnesses on their own behalf and for the defense generally at the trial of the earlier indictment, having seen Williams beat and torture the four victims at the time and place specified therein.[9]

[9] The perjury indictment was in 48 counts, twelve against each of the four appellees (see R. 55). Counts 1, 2, and 3 (R. 1–10) charged Williams with falsely testifying that he had not beaten the victim Purnell. (The draftsman of the indictment apparently deemed it necessary or advisable, in order to guard against possible future procedural complications, to split Williams' alleged perjury with respect to Purnell into three counts—one alleging the perjury to have been committed with respect to the count-one conspiracy charge of the earlier indictment, the second alleging the perjury to have been committed with respect to the count-two substantive charge of the earlier indictment, and the third alleging the perjury to have been committed with respect to both those charges. The same procedure was followed in the remaining counts, 4 through 48.) Counts 4, 5, and 6 (R. 11–21) charged Ford with falsely testifying that he had not seen Williams beat Purnell. Counts 7, 8, and 9, and counts 10, 11, and 12 charged Bombaci and Yuhas, respectively, with falsely testifying that they had not seen Williams beat Purnell. The remaining counts—13 through 48—followed the same pattern as the first twelve, differing only in the names of the victims involved (twelve counts naming Robinson as the victim, twelve naming Priest, and twelve, Sturniolo).

In view of the above-described pattern of the various counts of the perjury indictment, it has been stipulated that "Counts 1, 2 and 3 are typical of all 12 counts against appellee Williams and counts 4, 5 and 6 against appellee Ford are typical of the remaining counts against him and the counts

On March 28, 1950, pursuant to motions filed by the appellees (R. 22–27; and see R. 50–51), the District Court dismissed the perjury indictment (R. 43–44). The order of dismissal explains the grounds of the decision as follows (R. 44): (1) Since the appellee Williams was tried and convicted of the substantive offenses of depriving the four named victims of their constitutional rights by beating and torturing them in order to extract confessions, to try him now for perjuriously denying at his trial that he inflicted the beatings in question "would constitute double jeopardy"; (2) since the appellees Ford, Bombaci, and Yuhas were tried and acquitted, both as principals and as accessories, of the substantive offenses of depriving the four named victims of their constitutional rights by beating and torturing them in order to extract confessions, to try them now for perjuriously denying at their trial that they had seen Williams beat the victims is foreclosed by the principle of *res judicata*, because "'[w]hether they had seen or observed Williams beat the victims was a part and parcel of the charge against them in the substantive counts"; (3) since the Court of Appeals for the Fifth Circuit directed the quashing of the conspiracy indictment which superseded the conspiracy counts of the earlier indictment, in re-

against appellees Bombaci and Yuhas. In order to simplify the record and avoid repetition, it is further stipulated that only counts 1–6, inclusive, need be printed" (R. 55).

spect of which the jury had been unable to reach verdicts (see *supra*, p. 8, and fn. 8), "there was no jurisdiction or right to try the [appellees] on the conspiracy counts [of the earlier indictment], and the counts in this perjury indictment based on the conspiracy counts * * * are bad." [10]

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[10] The order of dismissal reads in pertinent part as follows (R. 44):

"First I shall discuss the counts in this indictment dealing with the substantive counts in case No. 7279. Williams has been convicted on the substantive counts in said case No. 7279. It is the beating of the victims by Williams that was involved in the substantive counts in case No. 7279, on which he was convicted, that is involved in the counts in this perjury indictment with reference to alleged false swearing in case No. 7279. Conviction in this case, No. 7333, would constitute double jeopardy.

"Ford, Bombaci and Yuhas were found not guilty on the substantive counts in case No. 7279. While the defendants Yuhas and the corporate defendant were charged in the substantive counts with aiding and abetting, the defendants Ford and Bombaci could have been found guilty under the general law of aiding and abetting. The jury's determination that they were not guilty was a determination of their guilt whether as principals or accessories. Whether they had seen or observed Williams beat the victims was a part and parcel of the charge against them in the substantive counts. Under the case of Ehrlich vs. United States, 145 F. (2) 693, the counts in this perjury indictment based on alleged false swearing in defending the charges contained in the substantive counts in No. 7279 are bad.

"Next I will discuss the counts in this indictment charging perjury in the defense of the conspiracy counts in case No. 7279. Subsequent to the trial in case No. 7279, a new indictment was also found which has four counts under Section 19 (18 U. S. C. Sec. 51), substantially like the four conspiracy counts in case No. 7279. On this last indictment

The Government's motion to vacate the order of dismissal and for rehearing (R. 45–49) was denied (R. 49–50), and this appeal followed.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that the appellee Williams' conviction of the substantive offenses of depriving the alleged victims of their constitutional rights under color of law, by beating and torturing them in order to extract confessions, bars his prosecution for perjury in denying that he beat and tortured the victims, on the ground that such prosecution would constitute double jeopardy.

2. In holding that the acquittal of the appellees Ford, Bombaci, and Yuhas of those substantive offenses bars their prosecution for perjury in denying having witnessed the use of brutality by Williams, on the ground that their acquittal constitutes *res judicata* on the issue of the truthfulness or falsity of that part of their testimony.

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each defendant was convicted and sentenced, and Williams, Bombaci, Perry and Ford appealed. The case was reversed and the indictment ordered quashed. Under these circumstances there was no jurisdiction or right to try the defendants on the conspiracy counts in case No. 7279, and the counts in this perjury indictment based on the conspiracy counts in case No. 7279 are bad.

"The indictment in this case is dismissed as to all defendants."

On review under the Criminal Appeals Act (18 U. S. C. 3731), this Court has considered itself precluded from review of anything but the precise questions decided by the trial court. *United States* v. *Celestine*, 215 U. S. 278, 283.

3. In holding that the subsequent quashing of the conspiracy charges precluded prosecution of the appellees for perjury for false testimony given at their trial on the conspiracy charges.

4. In dismissing the perjury indictment.

SUMMARY OF ARGUMENT

1. Since the doctrine of double jeopardy applies only where the offense of which the accused is charged is identical in law and in fact with an offense for which he has already been tried, Williams was not subjected to second jeopardy by being prosecuted, following his conviction of beating the alleged victims, for perjuriously denying at his trial that he had done so. The offenses were plainly distinct.

2. The jury's acquittal of Ford, Bombaci, and Yuhas of beating the alleged victims, and of aiding and abetting Williams in doing so, was not an adjudication that they did not see Williams in the act of beating them. On the contrary, the jury's conviction of Williams was the equivalent of a finding that Ford, Bombaci, and Yuhas testified falsely in denying that they saw Williams inflict brutality in their presence. The dismissal of the perjury indictment against them on the ground of *res judicata* was therefore error.

3. The subsequent decision of the Court of Appeals (challenged by the Government in No. 26) invalidating the superseding conspiracy indictment under Section 19 of the Criminal Code

did not vitiate the jurisdiction of the trial court to try the conspiracy counts of the original indictment. That decision, therefore, even if correct, would not preclude the prosecution of the appellees for perjuries committed at the trial with respect to the conspiracy counts.

ARGUMENT

The effect of the decision of the District Court, if upheld, would be to grant an unwarranted immunity to all defendants in criminal trials who testify falsely. If the defendant be convicted, the conviction would bar a prosecution for perjury on the ground of double jeopardy; if the defendant be acquitted, the acquittal would bar a prosecution for perjury on the ground of *res judicata*. Admittedly, a defendant may claim immunity against self-incrimination under the Fifth Amendment by refusing to testify. However, if he chooses to testify, the oath taken by him has the same meaning as an oath taken by any other witness and he should be subject to the same penalty for false testimony.

I

THE PROSECUTION OF THE APPELLEE WILLIAMS FOR PERJURY IN DENYING AT HIS TRIAL THAT HE BEAT AND TORTURED THE ALLEGED VICTIMS DOES NOT CONSTITUTE DOUBLE JEOPARDY

It has long been settled that the doctrine of double jeopardy applies only where the offense of which the accused is charged is identical in law

and in fact with an offense for which he has already been tried. *Burton* v. *United States,* 202 U. S. 344, 378–381; *Gavieres* v. *United States,* 220 U. S. 338. "It is only an identity of offenses which is fatal." *Pinkerton* v. *United States,* 328 U. S. 640, 644. Here, Williams was tried and convicted of the substantive offenses of depriving certain theft suspects of their constitutional rights under color of law by extorting confessions from them by physical brutality. Plainly, those offenses were not the same as the offenses of which the present indictment accused him, *viz.,* testifying falsely under oath at his trial that he did not physically maltreat the suspects. Consequently, the District Court erred in holding that Williams' prosecution for perjury was barred by the principle of double jeopardy. *Youngblood* v. *United States,* 266 Fed. 795, 797–798 (C. A. 8); *Allen* v. *United States,* 194 Fed. 664, 666–667 (C. A. 4).

II

THE ACQUITTAL OF THE APPELLEES FORD, BOMBACI, AND YUHAS OF THE CHARGES THAT THEY BEAT AND TORTURED THE ALLEGED VICTIMS DID NOT CONSTITUTE AN ADJUDICATION THAT THEY TESTIFIED TRUTHFULLY IN DENYING HAVING WITNESSED THE USE OF BRUTALITY BY WILLIAMS

The acquittal of the appellees Ford, Bombaci, and Yuhas of the substantive offenses of depriving the theft suspects of their constitutional rights under color of law, by beating and tortur-

ing them in order to coerce confessions, did not constitute an adjudication of the issues of fact involved in their instant prosecution for perjury, *viz,* whether they testified truthfully or falsely when they denied having seen Williams strike and maltreat the suspects."[11] As to these appellees, the question is whether the facts testified to and as to which perjury is charged were necessarily adjudicated by the verdicts of acquittal. *Sealfon* v. *United States,* 332 U. S. 575, 578–579.

Where the alleged false swearing is as to a subordinate evidential matter, and not as to a general denial of guilt, it is well settled that the prior acquittal does not bar a prosecution for perjury. *Kuskulis* v. *United States,* 37 F. 2d 241 (C. A. 10); *Lipscomb* v. *United States,* 33 F. 2d 33 (C. A. 8); *Youngblood* v. *United States,* 266 Fed. 795, 797–798 (C. A. 8); see *Chitwood* v. *United States,* 178 Fed. 442 (C. A. 8); *People* v. *Albers,* 137 Mich. 678, 681–684, 100 N. W. 908,

[11] The charge in the indictment was as follows:

"* * * the said defendant CHARLES R. FORD, on said 19th day of January 1949, or thereafter, did knowingly wilfully, corruptly, feloniously and falsely depose and say in substance that the said FRANK J. PURNELL, JR., had not on the 28th day of March, A. D. 1947, in said building or shack aforesaid, in the presence of said CHARLES R. FORD, been struck, bruised, battered, beaten and assaulted by the said JAY G. WILLIAMS and that he, the said CHARLES R. FORD had not at the time and place last aforesaid seen and observed the said JAY G. WILLIAMS in the act of striking, bruising, battering, beating, assaulting and torturing the said FRANK J. PURNELL, JR., * * *" (R. 12–13; see also R. 16, 20.)

909–910.[12] In the case last cited, Albers, after being acquitted of the charge of offering a bribe to a certain city alderman, was tried and convicted of having perjured himself at his trial in denying that he had been sent to the alderman by one De Vries. On appeal, he contended that his acquittal of the bribery was *res judicata* and hence a bar to the perjury prosecution. The Supreme Court of Michigan, in rejecting the contention, said (137 Mich. at 682–684, 100 N. W. at 909–910):

> These cases [*United States* v. *Butler*, 38 Fed. 498 (E. D. Mich.); *Cooper* v. *Commonwealth*, 106 Ky. 909; *Petit* v. *Commonwealth* (Ky.), 57 S. W. 14] are authority for the proposition that an acquittal of a certain charge is a complete defense to a subsequent prosecution for perjury which is based upon the assumption that respondent was guilty of that charge. If this proposition be sound, and it has been denied (see *State* v. *Caywood*, 96 Iowa 367 [65 N. W. 385]; *Hutcherson* v. *State*, 33 Tex. Cr. Rep. 67 [24 S. W. 908]; *People* v. *Sculley*, 3 N. Y. Cr. R. 244), it has no application to this case. It is true that the perjured testimony under consideration was material, because it strengthened respondent's claim that he was not acting corruptly. But its falsity is not, legally

[12] For other decisions to the same effect, see annotations at 37 A. L. R. 1291–1292. No decision to the contrary has been found.

speaking, inconsistent with respondent's innocence of the crime of bribery. Because respondent was innocent of that crime, it does not follow that all testimony tending to prove his innocence was true, and that all testimony tending to prove his guilt was false. * * *

* * * * *

"The former verdict is conclusive only as to facts directly and distinctly put in issue, and the finding of which is necessary to uphold the judgment. The doctrine of estoppel [that is, the conclusiveness of a former judgment] is restricted to facts directly in issue, and does not extend to facts which may be in controversy, but which rest in evidence, and are merely collateral. 'A fact or matter in issue is that upon which the plaintiff proceeds by his action, and which the defendant controverts in his pleadings, while collateral facts are such as are offered in evidence to establish the matters or facts in issue.' *Garwood* v. *Garwood,* 29 Cal. 521." 1 Freeman on Judgments, § 257.

Under the indictment (*supra,* pp. 4–5) and the District Court's charge to the jury (see Record, No. 365, pp. 315, 321–322) in the original prosecution for committing the substantive offenses defined by Section 20 of the Criminal Code, Ford and Bombaci (together with Williams) were charged as principals, and Yuhas as an aider and abettor, in activities constituting violations of the

statute; that is, Ford and Bombaci (and Williams) were charged with detaining and beating the named victims, aided and abetted by Yuhas, in deprivation of the victims' constitutional rights and privileges. The perjury indictment charged Ford, Bombaci, and Yuhas with having sworn falsely when they testified that they had not seen and observed Williams in the acts of striking and beating the victims. The acquittal of Ford, Bombaci, and Yuhas was a finding that they had not engaged in the acts of brutality themselves, or aided and abetted in their performance; but the jury, by acquitting them, did not adjudge that they had not witnessed the infliction of brutality by Williams. They were acquitted, in short, of engaging in the brutal activities either as principals or accessories, but not of observing those activities. It should be noted that the trial court carefully charged the jury that Ford, Bombaci, and Yuhas could not be held guilty as aiders and abettors merely because they were present when the beatings occurred (Record, No. 365, pp. 322, 327–328, 330, 332). Consistently, therefore, with the verdicts of not guilty, those defendants could have been present at the beatings in question. Hence, their acquittals constituted no adjudication on that score. And, for the reasons stated above, the same result would have followed even if the trial court had not given such instructions as to those defendants.

Ehrlich v. *United States*, 145 F. 2d 693 (C. A. 5), upon which the District Court relied (R. 44), is not authority to the contrary, since the decision in that case was predicated upon a finding that the fact testified to, and as to which the perjury was charged, was the very fact which constituted the basis of the original charge upon which the defendant had been acquitted. Hence, that decision is consistent with the general rule enunciated in the cases cited above.[13]

Furthermore, this was a peculiarly inappropriate case for invoking the doctrine of *res judicata* as to the appellees Ford, Bombaci, and Yuhas in respect of the issue of the truthfulness or falsity of their testimony that they did not see Williams beat the victims. For, the same jury which acquitted those defendants of physically maltreating the theft suspects *convicted Williams of doing so.* Plainly, therefore, the jury determined that the suspects were beaten and that Williams did the beating. And since Ford, Bombaci, and Yuhas did not dispute the Government's evidence that they were present in the shack during the interrogations of the victims, when, according to the latter, Williams beat them, but on the contrary admitted being present during the interrogations of at least some of the victims (*supra*, p. 7 and fn. 6), the jury's verdict con-

[13] Moreover, the weight of authority is opposed to the *Ehrlich* decision. The cases are collected at 37 A. L. R. 1291, 1292–1298.

victing Williams was tantamount to a finding that the other appellees testified falsely in denying that Williams used brutality in their presence.

III

THE SUBSEQUENT DECISION OF THE COURT OF APPEALS QUASHING THE CONSPIRACY CHARGES DID NOT PRECLUDE PROSECUTION OF THE APPELLEES FOR PERJURY COMMITTED AT THE TRIAL OF THOSE CHARGES

The subsequent decision of the Court of Appeals invalidating the superseding conspiracy indictment under Section 19 of the Criminal Code[14] (see fn. 8, *supra*, p. 8) did not vitiate the jurisdiction of the trial court to try the conspiracy counts of the original indictment. Even if it be assumed, *arguendo*, that the trial court erred in sustaining the validity of Section 19 as applied in the indictment, its jurisdiction was not divested by the subsequent decision of the Court of Appeals. Cf. *United States* v. *United Mine Workers*, 330 U. S. 258, 289–295. It has often been held that a subsequent determination of invalidity of a statute upon which an indictment was based, or subsequent determination that the indictment was otherwise insufficient or deficient and hence quashable, does not bar a prosecution for perjury committed at the trial of the indict-

[14] The Government contends that this decision of the Court of Appeals was erroneous. The decision is before this Court for review in No. 26.

ment. *Boehm v. United States,* 123 F. 2d 791, 809 (C. A. 8), certiorari denied, 315 U. S. 800; *State* v. *Rowell,* 72 Vt. 28, 47 Atl. 111; *State* v. *Mandehr,* 168 Minn. 139, 209 N. W. 750; *Kelley* v. *State,* 51 Tex. Cr. 507, 103 S. W. 189. See also *West* v. *United States,* 258 Fed. 413, 416–417 (C. A. 6). Cf. *United States* v. *Kapp,* 302 U. S. 214, 217–218; *Kay* v. *United States,* 303 U. S. 1, 6–7.

CONCLUSION

The District Court's judgment dismissing the indictment is erroneous in all its aspects, and should therefore be reversed.

Respectfully submitted.

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OCTOBER TERM, 1950.

No. 134.

UNITED STATES OF AMERICA, APPELLANT,

VS.

JAY G. WILLIAMS, CHARLES R. FORD, JOHN S. BOMBACI, AND ANDREW J. YUHAS, APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

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BRIEF FOR THE APPELLEES.

OPINION BELOW.

The District Court rendered no formal opinion. Its order dismissing the indictment, which discloses the grounds of its decision, appears at R. 43-44.

JURISDICTION.

The order of the District Court dismissing the indictment was entered on March 28, 1950 (R. 43-44), and the Government's motion to vacate the order of dismissal and for rehearing (R. 45-49) was denied on April 12, 1950 (R. 49-50). The United States filed its notice of appeal to this Court on May 11, 1950 (R. 50). Probable jurisdiction was noted by this Court on October 16, 1950 (R. 53). The jurisdiction of this Court to review on direct appeal the judgment of the District Court sustaining, prior to the attachment of jeopardy, the defendants' pleas in bar to the indictment is conferred by 18 U. S. C. 3731.

QUESTIONS PRESENTED.

1. Does false testimony given in the course of a trial on an indictment which does not charge a crime and is void constitute perjury?

2. Does Williams' conviction upon a criminal charge bar a subsequent prosecution for perjury with reference to Williams' testimony as to the act constituting the basis for such criminal charge, i. e., assault and battery, where such act is necessarily determinative of the issue?

3. Does Yuhas' acquittal upon a criminal charge bar a subsequent prosecution for perjury with reference to his testimony as to an act constituting the basis of such criminal charge and necessarily determinative of the issue?

STATUTE INVOLVED.

18 U. S. C. 1621 provides:

> Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in

which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

STATEMENT.

The appellees accept the statement made in the Government's brief, page 3, with the addition of the following.

The substantive offenses of which Williams was convicted under Section 20 of the Criminal Code charged him with beating and torturing each of the complaining four witnesses (R. 30-42) in the even numbered counts of the indictment respectively. Williams testified he did not commit such assault and battery at his trial Case No. 365 herein. The indictment for perjury (R. 1-21) alleges Williams falsely testified as to each of said complaining witnesses that he had not:

> "* * * in said building or shack aforesaid, struck, bruised, battered, beaten, assaulted or tortured * * *."

said complaining witnesses.

A motion to dismiss the perjury indictment was filed by Williams. It alleged (R. 24-25):

> "* * * and that the said fact or facts so testified to by this defendant in his own behalf and denial of said assault and battery as aforesaid, was the act

charged in said criminal case No. 7279-M-Criminal and this fact was necessarily determinative of the issue—and this defendant alleges his conviction under counts numbered 2-4-6 and 8 of said indictment numbered 7279-M-Criminal bars a prosecution for perjury in the instant case."

The trial court sustained the motion to dismiss by Williams.

Yuhas was not charged as a principal, but as an aider and abettor in the beating of the complaining witnesses, on which counts Williams was convicted and Yuhas acquitted.

SUMMARY OF ARGUMENT.

I.

False testimony given in the course of a trial upon a void indictment which fails to charge any crime against the United States is not perjury.

This contention is supported by the great weight of authority and is based upon the theory that, where the court has no jurisdiction to try the alleged offenders, it is not a competent tribunal and no statement made in the course of such proceedings would be material. See *Paine's Case*, Yelv. 111, 80 Eng. Rep. 76 (1792); *McClannahan* v. *Commonwealth*, 10 Ky. Ops. 72; *Rex* v. *Cohen*, 1 Stark 511, 171 Eng. Rep. 546; *United States* v. *Jackson*, 20 D. C. 424, 82 A. L. R. 1129; *West* v. *United States*, 258 Fed. 413, 416-417; 41 Am. Jur. 14, Perjury, Sec. 23.

II.

The trial judge properly entered an order sustaining the motion to dismiss as to Williams but misconceived the

grounds stated in the order of dismissal as being founded on the theory of former jeopardy.

The Government contends (Brief 14) that the prosecution of Williams for perjury in denying at his trial that he beat and tortured the alleged victims does not constitute double jeopardy. The writer is in accord with this contention, which however is not the issue involved by the granting of Williams' motion to dismiss.

The true legal issue presented by the order of dismissal as to Williams is:

> DEFENDANT'S CONVICTION UPON A CRIMINAL CHARGE BARS A SUBSEQUENT PROSECUTION FOR PERJURY WITH REFERENCE TO DEFENDANT'S TESTIMONY AS TO THE ACT CONSTITUTING THE BASIS FOR SUCH CRIMINAL CHARGE WHICH ACT IS NECESSARILY DETERMINATIVE OF THE ISSUE.

III.

Yuhas, having been acquitted of aiding and abetting Williams in the beatings, the Government is estopped from again trying this case and attempting to prove that Yuhas saw the beatings, that fact having already been determined by a former jury.

ARGUMENT.

I.

False testimony given in the course of a trial on a void indictment which does not charge a crime and which the court is therefore without jurisdiction to try is not perjury.

The Court of Appeals for the Fifth Circuit in *Williams v. United States*, 179 F. 2d 644, pending on writ of certiorari, No. 26, granted October 16, 1950, held that the conspiracy indictment which superseded the four conspiracy counts of the earlier indictment was bad and ordered it quashed.

The fault found with the indictment was not that it failed because of some technical error to state a crime, but that it failed in a very material respect. It charged violation of Section 19, Criminal Code, in that the defendants had conspired to deprive certain citizens of rights secured by the Fourteenth Amendment to the Constitution. The Court held that Section 19 does not embrace such an alleged offense.

The indictment was void, not voidable. Under the facts of the case no valid indictment for conspiracy could be found.

It is true that four other counts of the indictment upon which the trial defendants were first tried were held to be good and the indictment in the instant case charges in separate counts that perjury was committed as to those counts but the trial was had upon both the good and bad counts of the indictment and testimony was given as to both without distinction. In any event, this appeal

is not concerned with them since the question is not raised by the District Court's order.

It must be borne in mind that 18 U. S. C. 1621 provides, "Whoever, having taken an oath before a *competent* tribunal * * *" (Emphasis added).

A court which is wholly without jurisdiction is not a competent tribunal.

A Federal District Court has no criminal jurisdiction to try matters which are not crimes against the United States.

Paine's Case, Yelv. 111, 80 Eng. Rep. 76 (1792):

> *Nota*: per Williams, Justice, that it was resolved by all the Justices of England in the Star-Chamber in the case of one Paine of Middlesex, who was sued there for perjury in the Court of Requests on his deposition in a case there depending, where the conveyance and title of land and freehold come in question, that this perjury was not punishable; for it is but a vain and idle oath, and not a corrupt oath, because the Court of Requests have nothing to do with, nor can examine titles of land, which are real, and are to be discussed and determined in the King's Courts."

Suppose that these defendants had been indicted under Section 19 for conspiracy in that they combined and agreed, while playing football, to rush through tackle and knock the tackle flying, thus depriving him of his right not to be disturbed in his person.

True, the District Court has jurisdiction to try offenses laid under Section 19, but they must be *offenses* and against the United States.

Or, suppose that members of the Florida Milk Control Board are indicted under Section 19 in that they

conspired while acting under color of state law to raise the price of milk, thereby depriving children of impoverished citizens of the right to have milk.

It is doubtful that any one would consider this a crime against the United States and a trial upon such an indictment would be a nullity, but no more so than the trial in the instant case, which does not charge any offense against the United States.

The general rule, stated in 41 Am. Jur. 14, Perjury, Sec. 23, is that:

> "In order to constitute perjury, the false statement must be made in a proceeding, or in relation to matter, within the jurisdiction of the tribunal or officer before whom the proceeding is held, or by whom the matter is considered. Accordingly, it is well settled that an indictment for perjury will not lie against a witness for false swearing on the trial of a void judicial proceeding. However, when there is a defect which renders the proceeding voidable only, and such proceeding is amendable, or when the defects are waived by the parties and the cause is heard on the merits, perjury may be charged * * *."

Authorities supporting this statement are collected in an exhaustive annotation in 82 A. L. R. 1127, to which the Court's attention is invited.

The annotator there states, page 1128:

> "It is a well-established general rule that perjury cannot be charged on a false oath in a proceeding before a court which had no jurisdiction to inquire into the matter which was the subject of that proceeding."

In *McClannahan* v. *Commonwealth*, 10 Ky. Ops. 72, it was said, page 73:

"The administration of an oath in a case over which the court has no jurisdiction is, like every other part of the proceeding, a mere nullity, the judge having no more power to administer it than he would on the street where no purpose was to be accomplished by it, nor any oath required."

In *Rex v. Cohen*, 1 Stark 511, 171 Eng. Rep. 546, the Court said:

"* * * since the oath was taken in an unauthorized cause, I cannot say that the swearing amounts to perjury, however I may regret it * * *."

The Court in *Collins v. State*, 78 Ala. 433, 435, said:

"No oath taken before an officer administering justice under color of authority, which is in fact unwarranted and void, can, though false, amount to perjury."

The following account of the case, *United States* v. *Jackson*, 20 D. C. 424 (not available to briefer), is found in 82 A. L. R. 1129:

"* * * an indictment for perjury alleged to have been committed on a trial for receiving stolen goods, the court said: 'We think it is very well settled, the authorities seeming to be uniform upon that point, that when perjury is assigned to have been committed in the course of a trial in any court, that the court in which the trial is held, where the perjury is alleged to have been committed, must have had jurisdiction of the action or prosecution in which the oath was taken, and that unless the court had jurisdiction to try and dispose of the case, perjury cannot be assigned. We therefore hold that it was essential that the police court should have had jurisdiction to try the case without a jury at the time the oath was administered to the defendant, and, not having that jurisdiction, and the oath having been administered upon a trial by the court, perjury cannot be assigned

upon any alleged false statement which she may have made in giving her testimony in the case.' "

West v. *United States*, 258 Fed. 413, 416-417, cited by the Government, page 22, points up the distinction between a proceeding in which the court has no jurisdiction and a proceeding in which the court has jurisdiction to proceed in the first instance but loses such jurisdiction when facts showing lack of jurisdiction appear.

We are confronted with no such case here. If the indictment fails to charge a crime the court is without jurisdiction to hear the matter at all.

II.

The assault and battery of the complaining witnesses, denied by Williams in his testimony under his plea of not guilty, was not testimony concerning a collateral matter material to the case but was the act constituting the entire basis of the substantive crime charged—and this fact (acts of assault and battery) was necessarily determinative of the issue. The cases supporting the contention of Williams, represent the majority rule of the Federal Courts, viz.:

Ehrlich v. *United States*, 5 Cir., 145 F. 2d 693.
United States v. *Angelo*, 3 Cir., 138 F. 2d 466.
United States v. *Butler*, D. C., 38 Fed. 498.
Chitwood v. *United States*, 8 Cir., 178 Fed. 442.
Allen v. *United States*, 4 Cir., 194 Fed. 664.
Youngblood v. *United States*, 7 Cir., 266 Fed. 795.
Kuskulis v. *United States*, 10 Cir., 37 Fed. 241.

III.

In the instant perjury case, it is Yuhas' contention that whether he did or did not see Williams beat the complaining witnesses was a fact necessarily determinative of

whether he aided or abetted Williams in the commission of the substantive act. This was not a collateral matter, but one directly in issue. The testimony at the trial (case No. 365 of this Court, *Williams* v. *United States*) was received in evidence in support of the various motions of the defendants to dismiss the perjury indictment (R. 27). This testimony discloses that no one ever gave any instructions to Williams to beat the complaining witnesses, that such action originated with Williams himself, and it was only after Williams commenced such assault and battery could the theory of aiding and abetting be applied. Certainly from the testimony in both of the trials (cases No. 365 and No. 26 of this Court) Yuhas never was an accessory before the fact under the term "aiding and abetting" nor does the indictment even attempt so to allege.

The additional argument advanced by the defendant Williams we therefore believe is applicable to Yuahs: Yuhas' acquittal bars a subsequent prosecution for perjury with reference to his testimony as to a fact constituting the basis for the charge of aiding and abetting in the commission of the substantive charge of assault and battery and which fact was necessarily determinative of the issue.

A similar situation was before the Court in *United States* v. *De Angelo*, 138 F. 2d 466. There the Court said:

> "The conclusiveness of a fact which has been completely adjudicated by a criminal trial is not confined to such matter only as is sufficient to support a plea of double jeopardy. Even though there has been no former acquittal of the particular offense on trial, a prior judgment on related matters has been said to be deemed conclusive as to all that the judgment determined. Cf. *U. S.* v. *Adams*, 281 U. S. 202, 205, 50 S. Ct. 269, 74 L. Ed. 807. The matter is one of collateral estoppel of the prosecution. Nor can there be any requirement of mutuality with respect

to a criminal judgment's conclusiveness. An accused is constitutionally entitled to a trial *de novo* of the facts alleged and offered in support of each offense charged against him and to a jury's independent finding in respect thereto. But a 'rule of evidence' has been recognized which accords to the accused the right to claim finality with respect to a fact or group of facts previously determined in his favor upon a previous trial. See *U. S. v. Carlisi*, D. C. E. D. N. Y., 32 Fed. Supp. 479, 482.

The pertinency of the foregoing rule depends upon what facts the verdict of acquittal in the former criminal trial served to conclude and whether the facts so determined are again put in issue by the government's allegations and proofs at a subsequent trial of the same defendant for another criminal offense * * *.

Among the facts so litigated and submitted for the jury's determination at the trial for the robbery were the question as to whether De Angelo was present at and had participated in the robbery as the driver of the car used in the perpetration of the robbery. The jury, by its verdict of acquittal as to De Angelo, determined those issues adversely to the government's allegations. They should not therefore have been gone into again at the trial of the conspiracy indictment.

In order to try Yuhas for perjury, it will be necessary to relitigate the very matters in issue at the former trial and which the jury has already determined as being in issue. This the government is estopped from doing.

CONCLUSION.

For the reasons herein expressed, we respectfully submit that the order of the District Judge be affirmed.

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